By Mr. MOTT: Petition of the American Federation of Labor, favoring the passage of the vocational educational bill (S. 3); to the Committee on Agriculture.

Also, petition of the Knights of Labor, Washington, D. C., favoring the passage of Senate bill 3175, for the restriction of immigration; to the Committee on Immigration and Naturalization.

By Mr. O'SHAUNESSY: Petition of the Federation of Jewish Farmers of America, New York, N. Y., favoring the establishment of farmers' credit unions; to the Committee on Banking and Currency.

By Mr. REYBURN: Petition of the Pennsylvania Wholesale Liquor Dealers' League, Philadelphia, Pa., protesting against the passage of the amended Kenyon liquor bill (S. 4043); to the Committee on the Judiciary.

By Mr. SPARKMAN: Petition of citizens of nine counties in Florida, favoring the passage of the Kenyon amended liquor bill (S. 4043); to the Committee on the Judiciary.

Also, petition of the Board of Trade of Eustis, Fla., favoring the reducing of letter postage to 1 cent; to the Committee on the Post Office and Post Roads.

By Mr. THAYER: Petition of the Men's Brotherhood of Union Church, Worcester, Mass., favoring the passage of the Kenyon bill relative to cleaning up of Washington for the inauguration; to the Committee on the District of Columbia.

By Mr. TILSON: Petition of the National Vehicle Association of the United States of America, Chicago, Ill., relative to the reorganization of the Consular and Diplomatic Service; to the Committee on Foreign Affairs.

SENATE.

MONDAY, *December 16, 1912.*

The Senate met at 11 o'clock a. m.

Prayer by the Chaplain, Rev. Ulysses G. B. Pierce, D. D.

JONATHAN BOURNE, Jr., and GEORGE E. CHAMBERLAIN, Senators from the State of Oregon, and WESLEY L. JONES, a Senator from the State of Washington, appeared in their seats to-day.

ELECTION OF PRESIDENT PRO TEMPORE.

Mr. LODGE called the Senate to order as Presiding Officer.

Mr. SMOOT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LODGE). The Senator from Utah suggests the absence of a quorum. The Secretary will call the roll.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Crawford	Lodge	Richardson
Bacon	Culberson	McCumber	Root
Bankhead	Cullom	Martin, Va.	Sanders
Borah	Curtis	Martine, N. J.	Simmons
Bourne	Dixon	Massey	Smith, Ga.
Brandegee	Fletcher	Nelson	Smith, Mich.
Bristow	Gallinger	Newlands	Smith, S. C.
Brown	Gore	O'Gorman	Smoot
Bryan	Gronna	Oliver	Stephenson
Burnham	Guggenheim	Overman	Stone
Burton	Jackson	Owen	Sutherland
Chamberlain	Johnson, Me.	Page	Swanson
Chilton	Johnston, Ala.	Paynter	Thornton
Clapp	Jones	Perkins	Tillman
Clark, Wyo.	Kenyon	Perky	Townsend
Clarke, Ark.	La Follette	Poindexter	Wetmore
Crane	Lea	Reed	Works

Mr. PAGE. I am compelled to announce the continued illness of my colleague [Mr. DILLINGHAM] and his necessary absence from the sessions of the Senate.

The PRESIDING OFFICER. Sixty-eight Senators have answered to their names. A quorum of the Senate is present. The Chair will ask the Secretary to read an extract from the Journal of the Senate.

The Secretary read from the Journal of the Senate of Thursday, May 11, 1911, as follows:

The PRESIDING OFFICER (Mr. LODGE in the chair) called the attention of the Senate to the fact that, having been called to the chair by the Vice President before the Senate had proceeded to the election of a President of the Senate pro tempore, he did not under clause 2 of Rule I of the Senate have the right to occupy the chair at this time.

On motion by Mr. BAILEY and by unanimous consent,

Ordered, That clause 2 of Rule I of the standing rules of the Senate be suspended, and that the present occupant of the chair should preside during the election of a President of the Senate pro tempore

The question being the election of a President of the Senate pro tempore.

On motion by Mr. SHIVELY, and by unanimous consent,

Ordered, That clause 2 of Rule I of the standing rules of the Senate be suspended, and that the present occupant of the chair preside during the proceedings connected with the election of a President of the Senate pro tempore.

Whereupon,

The Presiding Officer (Mr. LODGE in the chair) directed the roll to be called. (Senate Journal, May 11, 1911.)

The PRESIDING OFFICER. The entry of May 15, 1911, will be read.

The SECRETARY. Page 239 of the Journal. The proceedings in the CONGRESSIONAL RECORD, page 1204, are as follows:

The PRESIDING OFFICER. The Senate will proceed to the election of a President pro tempore.

The Chair desires to say, before action is taken, that on Thursday last the Senate, by unanimous consent, suspended clause 2 of Rule I, which provides that the Secretary shall take the chair pending the election of a President pro tempore, and continued in the chair its present occupant. Whether that action was intended to be continuous, covering all proceedings connected with the election of a President pro tempore, or was for that day only, it is not for the Chair to determine. It is for the Senate to determine that question before we proceed further.

Mr. SHIVELY. I ask unanimous consent that clause 2 of Rule I be suspended and that the senior Senator from Massachusetts [Mr. LODGE] occupy the chair during the proceedings to elect a President pro tempore.

The PRESIDING OFFICER. The Senator from Indiana moves that the present occupant of the chair continue to occupy it during the proceedings——

Mr. SHIVELY. If the Chair please, I made no motion. I asked unanimous consent.

The PRESIDING OFFICER. The Senator from Indiana asks unanimous consent that clause 2 of Rule I be suspended, and that the present occupant of the chair continue to occupy it during the proceedings connected with the election of a President pro tempore. Is there objection? The Chair hears none, and it is so ordered. (Proceedings of Senate, May 15, 1911.)

The PRESIDING OFFICER. Acting under that resolution, as the term for which the Senator from Georgia [Mr. BACON] was chosen President pro tempore has expired, the present occupant of the chair has called the Senate to order for the purpose of choosing a President pro tempore.

Mr. SMOOT. On Saturday, December 14, I offered an order and asked for its immediate consideration——

Mr. BRISTOW. Mr. President——

The PRESIDING OFFICER. The Secretary will read the resolution submitted by the Senator from Utah.

Mr. BRISTOW. I rise to a point of order.

The PRESIDING OFFICER. The Senator from Kansas will state it.

Mr. BRISTOW. There is no business in order except to proceed by ballot to elect a President pro tempore under the rule.

Mr. SMOOT. I asked on Saturday that the order might lie on the table, and now I ask that it be presented to the Senate.

Mr. BRISTOW. I make the point of order that that is not in order until a President pro tempore has been elected, and the way to elect a President pro tempore under the rule is by ballot.

The PRESIDING OFFICER. Will the Senator read the rule?

Mr. BRISTOW. Page 84, Jefferson's Manual:

In the Senate a President pro tempore, in the absence of the Vice President, is proposed and chosen by ballot.

The PRESIDING OFFICER. The first rule of the Senate states that the Senate shall choose its Presiding Officer, which is the language of the Constitution. No method is stated either in the rule or in the Constitution as to the manner in which the Senate shall choose. In the opinion of the Chair the Senate may choose by ballot, by calling the roll, or by resolution, and the last course has been followed over and over again. The Secretary will read the resolution offered by the Senator from Utah.

The Secretary read the order submitted by Mr. SMOOT on the 14th instant, as follows:

Ordered, That JACOB H. GALLINGER, a Senator from the State of New Hampshire, be, and he hereby is, elected President of the Senate pro tempore, to hold and exercise the office from and including December 16, 1912, to and including January 4, 1913; that AUGUSTUS O. BACON, a Senator from the State of Georgia, be, and he hereby is, elected President of the Senate pro tempore, to hold and exercise the office from and including January 5, 1913, to and including January 18, 1913; that JACOB H. GALLINGER be, and he hereby is, elected President of the Senate pro tempore, to hold and exercise the office from and including January 19, 1913, to and including February 1, 1913; that AUGUSTUS O. BACON be, and he hereby is, elected President of the Senate pro tempore, to hold and exercise the office from and including February 2, 1913, to and including February 15, 1913; and that JACOB H. GALLINGER be, and he hereby is, elected President of the Senate pro tempore to hold and exercise the office from and including February 16, 1913, to and including March 3, 1913.

The PRESIDING OFFICER. The question is on the adoption of the resolution.

Mr. BRISTOW. I ask for a roll call on the resolution.

The PRESIDING OFFICER. The Senator from Kansas asks for the yeas and nays on the adoption of the resolution.

The yeas and nays were ordered, and the Secretary proceeded to call the roll.

Mr. GALLINGER (when his name was called). I have a general pair with the Senator from Arkansas [Mr. DAVIS] and will withhold my vote.

Mr. LEA (when his name was called). I have a general pair with the junior Senator from Rhode Island [Mr. LIPPITT] and therefore withhold my vote.

Mr. OLIVER (when Mr. PENROSE's name was called). My colleague [Mr. PENROSE] is detained from the Senate to-day by important business in Pennsylvania. He is paired with the junior Senator from Mississippi [Mr. WILLIAMS].

Mr. POINDEXTER (when his name was called). I should like to make a parliamentary inquiry, whether or not it is in order to cast a vote for some other person than one named in the resolution?

The PRESIDING OFFICER. Not on this question. The question is on the adoption of the resolution.

Mr. POINDEXTER. A further inquiry. Does not that deprive the Senate of the privilege of voting by ballot for the presiding officer?

The PRESIDING OFFICER. The question is on the adoption of the resolution. The Chair thinks nothing else is in order.

Mr. POINDEXTER. I vote "nay" on the resolution.

Mr. CLARK of Wyoming (when Mr. WARREN's name was called). My colleague [Mr. WARREN] is unavoidably detained from the Senate.

Mr. CHILTON (when Mr. WATSON's name was called). My colleague [Mr. WATSON] is absent. He is paired with the senior Senator from New Jersey [Mr. BRIGGS].

Mr. WILLIAMS (when his name was called). I have a general pair with the Senator from Pennsylvania [Mr. PENROSE], but I am informed by his colleague that if he were present he would vote "yea." I shall therefore vote. I vote "yea."

The roll call was concluded.

Mr. CULBERSON. I note the absence of the Senator from Delaware [Mr. DU PONT], with whom I have a general pair. Therefore I withhold my vote.

Mr. CHAMBERLAIN. I desire to state on behalf of the Senator from New Mexico [Mr. CATRON] that he is absent now, and has been for two weeks, on business of the Senate.

Mr. MYERS. I wish to inquire if the Senator from Connecticut [Mr. MCLEAN] has voted.

The PRESIDING OFFICER. The Chair is informed that that Senator has not voted.

Mr. MYERS. Then I announce that I am paired with the Senator from Connecticut [Mr. MCLEAN] and withhold my vote.

Mr. BRYAN. I should like to inquire if the Senator from New Mexico [Mr. FALL] has voted.

The PRESIDING OFFICER. The Senator from New Mexico [Mr. FALL] has not voted.

Mr. BRYAN. I am paired with that Senator, but I transfer my pair to the senior Senator from Maryland [Mr. SMITH] and vote "yea."

Mr. JOHNSON of Maine. I wish to announce that my colleague [Mr. GARDNER] is necessarily absent from the Senate and that he has a general pair with the junior Senator from Massachusetts [Mr. CRANE].

Mr. CURTIS. I wish to announce that the Senator from Kentucky [Mr. BRADLEY] is paired with the Senator from Indiana [Mr. KERN]; that the Senator from New Jersey [Mr. BRIGGS] is paired with the Senator from West Virginia [Mr. WATSON]; that the Senator from New Mexico [Mr. CATRON] is paired with the Senator from Indiana [Mr. SHIVELY]; and that the Senator from Delaware [Mr. DU PONT] is paired with the Senator from Texas [Mr. CULBERSON].

The result was announced—yeas 51, nays 18, as follows:

YEAS—51.

Bailey	Crawford	Martin, Va.	Simmons
Bankhead	Cullom	Massey	Smith, Ga.
Borah	Curtis	Nelson	Smith, Mich.
Bourne	Fletcher	Oliver	Smoot
Brandegee	Foster	Overman	Stephenson
Brown	Guggenheim	Owen	Stone
Bryan	Hitchcock	Page	Sutherland
Burnham	Jackson	Paynter	Swanson
Burton	Johnson, Me.	Perkins	Thornton
Chamberlain	Johnston, Ala.	Pomerene	Tillman
Chilton	Kenyon	Richardson	Wetmore
Clarke, Ark.	Lodge	Root	Williams
Crane	McCumber	Sanders	

NAYS—18.

Ashurst	Gore	Newlands	Smith, S. C.
Bristow	Gronna	O'Gorman	Townsend
Clapp	Jones	Perky	Works
Clark, Wyo.	La Follette	Poindexter	
Dixon	Martine, N. J.	Reed	

NOT VOTING—25.

Bacon	Dillingham	Lea	Smith, Ariz.
Bradley	du Pont	Lippitt	Smith, Md.
Briggs	Fall	McLean	Warren
Catron	Gallinger	Myers	Watson
Culberson	Gamble	Penrose	
Cummins	Gardner	Percy	
Davis	Kern	Shively	

The PRESIDING OFFICER. The Senate adopts the resolution. The Senator from New Hampshire [Mr. GALLINGER] will take the chair.

Mr. GALLINGER thereupon took the chair as President pro tempore.

THE JOURNAL.

The PRESIDENT pro tempore (Mr. GALLINGER). The Secretary will read the Journal of the proceedings of Saturday last.

The Secretary proceeded to read the Journal of the proceedings of Saturday last.

Mr. MCCUMBER. I ask unanimous consent that the further reading of the Journal may be dispensed with.

The PRESIDENT pro tempore. Is there objection to the request of the Senator from North Dakota?

Mr. REED. I object, Mr. President.

The PRESIDENT pro tempore. The Senator from Missouri objects. The reading will be continued.

The Secretary resumed and concluded the reading of the Journal, which was approved.

PRESIDING OFFICER FOR IMPEACHMENT TRIAL.

The PRESIDENT pro tempore. Senators, for reasons sufficient to the Chair, the Chair begs to be relieved from the duty of presiding over the Senate while it sits as a Court of Impeachment in the trial of Robert W. Archbald, and asks that the Senate shall select a Senator to preside over such proceedings.

Mr. LODGE. Mr. President, in view of the statement just made to the Senate by the President pro tempore, I offer the resolution which I send to the desk, and ask unanimous consent for its present consideration.

There being no objection, the resolution (S. Res. 409) was read, considered by unanimous consent, and agreed to, as follows:

Resolved, That the Hon. AUGUSTUS O. BACON, a Senator from the State of Georgia, be, and he is hereby, appointed to preside during the trial of the impeachment of Robert W. Archbald, circuit judge of the United States.

ELECTION OF PRESIDENT PRO TEMPORE.

Mr. SMOOT submitted the following resolution (S. Res. 410), which was read, considered by unanimous consent, and agreed to:

Resolved, That the Secretary wait upon the President of the United States and inform him that the Senate has elected JACOB H. GALLINGER, a Senator from the State of New Hampshire, President of the Senate pro tempore, to hold and exercise the office from and including December 16, 1912, to and including January 4, 1913; that the Senate has elected AUGUSTUS O. BACON, a Senator from the State of Georgia, President of the Senate pro tempore, to hold and exercise the office from and including January 5, 1913, to and including January 18, 1913; that the Senate has elected JACOB H. GALLINGER President of the Senate pro tempore, to hold and exercise the office from and including January 19, 1913, to and including February 1, 1913; that the Senate has elected AUGUSTUS O. BACON President of the Senate pro tempore, to hold and exercise the office from and including February 2, 1913, to and including February 15, 1913; and that the Senate has elected JACOB H. GALLINGER President of the Senate pro tempore, to hold and exercise the office from and including February 16, 1913, to and including March 3, 1913.

Mr. SMOOT submitted the following resolution (S. Res. 411), which was read, considered by unanimous consent, and agreed to:

Resolved, That the Secretary notify the House of Representatives that the Senate has elected JACOB H. GALLINGER, a Senator from the State of New Hampshire, President of the Senate pro tempore, to hold and exercise the office from and including December 16, 1912, to and including January 4, 1913; that the Senate has elected AUGUSTUS O. BACON, a Senator from the State of Georgia, President of the Senate pro tempore, to hold and exercise the office from and including January 5, 1913, to and including January 18, 1913; that the Senate has elected JACOB H. GALLINGER President of the Senate pro tempore, to hold and exercise the office from and including January 19, 1913, to and including February 1, 1913; that the Senate has elected AUGUSTUS O. BACON President of the Senate pro tempore, to hold and exercise the office from and including February 2, 1913, to and including February 15, 1913; and that the Senate has elected JACOB H. GALLINGER President of the Senate pro tempore, to hold and exercise the office from and including February 16, 1913, to and including March 3, 1913.

ANNUAL REPORT OF THE INTERSTATE COMMERCE COMMISSION (H. DOC. NO. 946).

The PRESIDENT pro tempore laid before the Senate the Twenty-sixth Annual Report of the Interstate Commerce Commission, which was referred to the Committee on Interstate Commerce and ordered to be printed.

DEMOTION OF WILLIAM HALL AND OTHERS.

The PRESIDENT pro tempore laid before the Senate a communication from the Postmaster General, stating, in response to Senate resolution of December 4, 1912, calling for the correspondence in the possession of the Post Office Department relative to the demotion of William Hall, C. H. Erwin, J. J. Negley, and C. P. Rodman, clerks in the Railway Mail Service,

that the papers will be furnished at the earliest date practicable, which was referred to the Committee on Post Offices and Post Roads.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by J. C. South, its Chief Clerk, announced that the House had passed the joint resolution (S. J. Res. 144) authorizing the payment of December salaries to officers and employees of the Senate and House of Representatives on the day of adjournment for the holiday recess.

PETITIONS AND MEMORIALS.

The PRESIDENT pro tempore presented resolutions adopted by the city council of Boston, Mass., relative to the high price of coal, which were referred to the Committee on Education and Labor.

He also presented a memorial of sundry citizens of Cincinnati, Ohio, remonstrating against the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. SMITH of Michigan. Mr. President, I send to the desk a telegram, which is one of many I have received bearing upon the same subject. I ask that it be read for the information of the Senate.

There being no objection, the telegram was read and ordered to lie on the table, as follows:

LANSING, MICH., *December 14, 1912.*

Hon. WM. ALDEN SMITH,
United States Senator, Washington, D. C.:

At a conference of committee representing the following State organizations—Michigan State Sunday School Association, Woman's Christian Temperance Union, Anti-Saloon League, and State prohibition committee—held in Battle Creek December 9, the following action was taken:

Resolved, We request our Senators and Representatives in Congress to vote for the passage of the Kenyon interstate liquor shipment bill.

E. K. WARREN, *Chairman.*
F. W. CORBAT, *Secretary.*

Mr. SANDERS. I offer resolutions passed at a meeting of the National Woman's Christian Temperance Union on December 15, with the request that they be read and printed in the RECORD.

There being no objection, the resolutions were read and ordered to lie on the table, as follows:

Resolutions passed at a meeting of the National Woman's Christian Temperance Union, December 15, 1912:

Whereas the shipment of alcoholic liquors into prohibition States to be sold contrary to the laws of those States is the greatest hindrance to the enforcement of the prohibitory law; and

Whereas it is manifestly wrong for out-of-State liquor makers and liquor sellers to have the protection of Federal law in sending alcoholic liquors into States to be sold contrary to law:

Resolved, That we respectfully petition the United States Congress to pass the amended Kenyon bill or some similar measure.

Mr. BRISTOW. I have a very large number of petitions in favor of the passage of the Kenyon-Sheppard bill. Several thousand citizens of Kansas petition for it. I will not ask to have them read, but that they be noted and filed.

The PRESIDENT pro tempore. Without objection, it is so ordered.

The petitions are as follows:

From sundry citizens of Monument, Arkansas City, Holton, Winona, Lebanon, Norton, Scott City, Sylvia, Ransom, Graham County, Wichita, Agra, Hoxie, Muscotah, Hill City, Potwin, Atchison, Utica, Glade, Mankato, Harvey, Sedgwick, Wellington, Ozawkie, and Osage City, all in the State of Kansas.

Mr. GRONNA. I have received a large number of petitions and resolutions signed by citizens of my State for the passage of the so-called amended Kenyon bill. I will not ask to have the petitions read, as they all bear on the same subject matter. I ask, however, that the heading of one of the petitions be embodied in the RECORD and that the remainder be appropriately referred.

There being no objection, the petitions were ordered to lie on the table, and the heading of one of the petitions was ordered to be printed in the RECORD, as follows:

To the Hon. A. J. GRONNA,
United States Senate, Washington, D. C.:

The undersigned, citizens and residents of the State of North Dakota, realizing the evil effects of the liquor traffic and the difficulty of enforcing the prohibition law of this State under the present interstate-commerce law, earnestly request you, as our representative, to use all legitimate means within your power to secure the passage of the bill known as the amended Kenyon bill, No. 4043, which will come up in the United States Senate on December 16 next.

Mr. TOWNSEND. Mr. President, I have sent for some petitions in behalf of the Kenyon-Sheppard liquor bill, which I desire to have noted and filed as soon as I can get them.

The PRESIDENT pro tempore. Permission is granted.

Mr. CLAPP. Mr. President, as I understand the rule, either petitions or private claims bills may be filed with the Secretary at any time during the sessions of the Senate.

The PRESIDENT pro tempore. They can be filed with the Secretary under the rule.

Mr. CLAPP. And they do not have to be presented in open session?

The PRESIDENT pro tempore. The Senator is correct.

Mr. TOWNSEND presented petitions of the Michigan State Sunday School Association, of the Woman's Christian Temperance Union, of the Antisaloon League, and of the State Prohibition committee, of Lansing; of the congregation of the First United Brethren Church of Grand Rapids; of the Christian Endeavor Union of Detroit; of the board of directors of the Petoskey Federation of Woman's Clubs; and of sundry citizens of Detroit, Harbor Springs, Lansing, Holly, Scotts, Petoskey, Kalamazoo, Caro, Prescott, and Battle Creek, all in the State of Michigan, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. STONE presented memorials of sundry citizens of Seneca; of Local Union No. 43, Beer Drivers and Stablemen, International Union of United Brewery Workmen of America; of Local Unions Nos. 237, 246, and 279, International Union of United Brewery Workmen of America, all of St. Louis; of the Trade Assembly of Joplin, all in the State of Missouri, and of the National German-American Alliance of Missouri, remonstrating against the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented petitions of sundry citizens of Westboro, West Plains, and Versailles, of the Civic League of Norborne, of the Lone Star Union, of the Woman's Christian Temperance Union of Albany, and of the congregation of the Methodist Episcopal Church South, of Elkins, all in the State of Missouri, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. JOHNSON of Maine presented petitions of sundry citizens of Turner Center, Stockholm, and Nobleboro, all in the State of Maine, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented a memorial of the local branch of the German-American Alliance of Lisbon Falls, Me., remonstrating against the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

Mr. McLEAN presented a petition of 22 citizens of Yalesville, Conn., praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which was ordered to lie on the table.

He also presented a petition of the Social Service League of Salisbury, Conn., and a petition of Manchester Grange, No. 31, Patrons of Husbandry, of South Manchester, Conn., praying for the enactment of legislation providing for the establishment of agricultural extension departments in connection with the agricultural colleges in the several States, which were ordered to lie on the table.

Mr. CULLOM presented memorials of Local Unions No. 21, of Belleville, and No. 337, No. 344, and No. 342, of Chicago, of the International Union of the United Brewery Workmen of America, of the joint executive board of Brewery and Distillery Workmen, of Peoria and Pekin, and of the United Societies for Local Self-Government, and the Personal Liberty League of Illinois, all in the State of Illinois, remonstrating against the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

He also presented petitions of the Woman's Christian Temperance Unions of Savanna, Percy, Downers Grove, Jackson County, Naperville, Galena, Aurora, Springfield, and Gridley; of the Brotherhood of the First Methodist Episcopal Church of Champaign; of the congregation of the Central Congregational Church, of Galesburg; of the Sabbath school convention at Monmouth; of the congregation of the Methodist Episcopal Church of Keensburg; and of sundry citizens of Galesburg, Valmeyer, Middlegrove, and Harvard, all in the State of Illinois, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. CURTIS presented petitions of the congregations of the First Presbyterian Church of Olathe, the Baptist Church of Olathe, the First Baptist Church of McPherson, and the Methodist Episcopal Church of Caldwell, and of sundry citizens of McPherson, Olathe, Denison, Hillsboro, Augusta, Holton, Winona, and Norton, all in the State of Kansas, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. ROOT presented a petition of the New York State Canners' Association, praying for the establishment of a bureau of inspection to inquire into the sanitary condition of the canning and preserving factories in that State, which was referred to the Committee on Agriculture and Forestry.

Mr. STONE presented sundry telegrams in the nature of memorials from Strandberg, McGreevy & Co., the Southwestern National Bank of Commerce, the Densmore Hotel Co., Edward J. McMahan, the Bauer Machine Works, the Commerce Trust Co., the Niles & Moser Cigar Co., the First National Bank, the Kumpfs Insurance Agency, the H. P. Wright Investment Co., the Hodes Planing Mill, the A. J. Shirk Roofing Co., the Kupper Hotel Co., Charles Campbell, the Central Brass Works Co., Rothenberg & Schloss, the C. C. Yost Pie Co., and the Ridley Machine Works Co., all of Kansas City, in the State of Missouri, remonstrating against the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. SMITH of Maryland presented a petition of sundry citizens of Maryland, praying for the adoption of certain amendments to the patent laws, which was referred to the Committee on Patents.

Mr. SHIVELY presented petitions of the Ministerial Association of Terre Haute; of General Canby Post, No. 2, Grand Army of the Republic, of Brazil; and of Henry E. C. Cade, William H. McCord, Rev. Owen Wright and 8 other citizens of Veedersburg, all in the State of Indiana, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

Mr. GALLINGER presented petitions of sundry citizens of New Hampton, Claremont, Keene, and East Jaffrey, all in the State of New Hampshire, praying for the passage of the so-called Kenyon-Sheppard interstate liquor bill, which were ordered to lie on the table.

BILLS INTRODUCED.

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. BRISTOW:

A bill (S. 7777) granting an increase of pension to Eben S. Welch (with accompanying papers); to the Committee on Pensions.

By Mr. CLAPP:

A bill (S. 7778) to authorize the Minnesota River Improvement & Power Co. to construct dams across the Minnesota River; to the Committee on Commerce.

A bill (S. 7779) granting an increase of pension to Thomas C. Aldrich (with accompanying papers); to the Committee on Pensions.

(By request.) A bill (S. 7780) making it unlawful for any society, order, or association to send or receive through the United States mails, or to deposit in the United States mails, any written or printed matter representing such society, fraternal order, or association to be named or designated or entitled by any name hereafter adopted, any word or part of which title shall be the name of any bird or animal, the name of which bird or animal is already being used as a part of its title or name by any other society, fraternal order, or association; to the Committee on Post Offices and Post Roads.

By Mr. PAGE:

A bill (S. 7781) granting an increase of pension to Christopher P. Brown (with accompanying papers); to the Committee on Pensions.

By Mr. BURTON:

A bill (S. 7782) for reduction of postage rates on first-class mail matter; to the Committee on Post Offices and Post Roads.

By Mr. WETMORE:

A bill (S. 7783) granting an increase of pension to George W. Hale (with accompanying papers); to the Committee on Pensions.

OMNIBUS CLAIMS BILL.

Mr. CHILTON (for Mr. WATSON) submitted three amendments intended to be proposed by him to the omnibus claims bill, which were ordered to lie on the table and be printed.

Mr. REED submitted 42 amendments intended to be proposed by him to the omnibus claims bill, which were ordered to lie on the table and be printed.

AMENDMENTS TO THE LEGISLATIVE APPROPRIATION BILL.

Mr. BURTON submitted an amendment proposing to increase the salaries of certain employees in the office of the assistant treasurer at Cincinnati, Ohio, etc., intended to be proposed by him to the legislative, etc., appropriation bill, which was referred to the Committee on Appropriations and ordered to be printed.

JOHN W. CUPP.

Mr. CLAPP. On July 16 last the bill (S. 3159) for the relief of John W. Cupp was reported adversely from the Committee on Claims, and it was postponed indefinitely. But I understand, in talking with members of the committee, that possibly it was inadvertently done. Therefore, notwithstanding the adverse report, I ask unanimous consent to reconsider the vote by which the bill was postponed indefinitely, and I move that the Secretary of the Senate be directed to transmit to the clerk of the Committee on Claims the papers in connection with it, and that the bill be referred to the Committee on Claims.

The PRESIDENT pro tempore. Without objection, the action of the Senate indefinitely postponing the bill will be reconsidered and the request of the Senator from Minnesota will be complied with.

AGRICULTURAL EXTENSION DEPARTMENTS.

Mr. SMITH of Georgia. Mr. President, I desire to give notice that on Wednesday, immediately after the morning business, with the consent of the Senate, I desire to address the Senate upon the bill (H. R. 22871) to establish agricultural extension departments in connection with the land-grant colleges in the several States.

MEMORIAL ADDRESSES ON THE LATE SENATOR TAYLOR.

Mr. LEA. Mr. President, I desire to give notice that on Friday, February 7, 1913, I will ask that the business of the Senate may be suspended in order that fitting tribute may be paid to the memory of my late colleague, ROBERT LOVE TAYLOR.

PROCEDURE IN IMPEACHMENT TRIALS.

Mr. SUTHERLAND. I offer the resolution which I send to the desk, and ask to have it read.

The PRESIDENT pro tempore. The resolution submitted by the Senator from Utah will be read.

The Secretary read the resolution (S. Res. 412) as follows:

Resolved, That the Judiciary Committee of the Senate is instructed to prepare and report to the Senate such amendments and additions to the rules for impeachment trials as are necessary and appropriate to provide that in all impeachment cases hereafter instituted, except when the President or Vice President of the United States, a member of the Cabinet, or a member of the Supreme Court of the United States is impeached, the testimony may be taken by the Judiciary Committee and together with findings of fact reported to the Senate for its consideration and judgment.

Mr. SUTHERLAND. Mr. President, the provision of the Constitution with reference to impeachment is as follows:

The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside; and no person shall be convicted without the concurrence of two-thirds of the Members present.

Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment according to law.

That is the only provision of the Constitution with reference to the functions of the Senate in trying impeachment cases. I see no reason why the Senate may not take testimony as testimony is taken by a court of equity, for example, by reference, in the case of a court of equity, to a master, and in the case of the Senate by reference to a special committee or to a standing committee. I think it is very desirable that that course should be followed in the future, except where the high officers named in the resolution should be involved.

The Senate has been occupied in the present trial for two or three weeks. Its time has been taken away from the important business of the Senate. Many of the Senators could not be present to hear the testimony, and of necessity they are obliged to read it before they can act. The same result, it seems to me, would be obtained by referring the case in the first instance to the Judiciary Committee to take the testimony and report it to the Senate. Of course, the findings of fact which might be presented by the Judiciary Committee would only be advisory, and not binding on the Senate.

I have not been able to find any discussion on the subject except what is very briefly said in Jefferson's Manual, at page 153 of the Senate Manual. Speaking of the practice of the British Parliament in this respect, under the head of "Witnesses," it is said:

The practice is to swear the witnesses in open House, and then examine them there; or a committee may be named who shall examine them in committee, either on interrogatories agreed on in the House or such as the committee in their discretion shall demand.

I ask that the resolution be referred to the Judiciary Committee.

Mr. BAILEY. Mr. President, before the resolution is referred, I want to express the hope that it will never be adopted. In the first place, a proceeding of that kind would utterly fail to impress the country, and it would degenerate into something like a contested-election case. I indulge the hope—and I think that hope is justified by the history of the country—that impeachment trials will not become frequent enough to seriously interfere with the Senate in the discharge of its ordinary duties. But when a President or Vice President or a civil

officer of the United States is impeached by the House of Representatives, I think the inquest held by this body should be as solemn and impressive as possible, and I believe the open Senate—sitting, if you please, as a Court of Impeachment—is the place where every witness should be heard. To send the witnesses in a matter of this dignity to the privacy of a committee room is to make the proceeding less impressive than it ought to be, and, in my opinion, it would give some ground, now and then, for people to allege that the proceedings were not as fair and not as open as the nature of the proceedings requires.

I sympathize with the desire of the Senator from Utah [Mr. SUTHERLAND] to save the time of the Senate; but I do not myself know how the Senate could better spend its time than in trying a case like this. It is one of the duties devolved upon us by the Constitution, and it is one of the most solemn which we can perform. I hope we will never commit the most important part of it to any committee of this body.

Mr. BORAH. May I ask what disposition is to be made of the resolution?

The PRESIDENT pro tempore. The Senator from Utah made the request that it be referred to the Judiciary Committee. That will be done, without objection. The resolution will go to the Committee on the Judiciary.

Mr. REED subsequently said: I ask for another reading of the resolution offered by the Senator from Utah.

The PRESIDENT pro tempore. Without objection the resolution will again be read.

The Secretary read as follows:

Resolved, That the Judiciary Committee of the Senate is instructed to prepare and report to the Senate such amendments and additions to the rules for impeachment trials as are necessary and appropriate to provide that in all impeachment cases hereafter instituted, except when the President or Vice President of the United States, a member of the Cabinet, or a member of the Supreme Court of the United States is impeached, the testimony may be taken by the Judiciary Committee and, together with findings of fact, reported to the Senate for its consideration and judgment.

Mr. REED. Mr. President, as a matter of information, I wish to inquire whether it was the purpose of the Senator from Utah to have a rule reported making it obligatory that these proceedings should go to the Judiciary Committee, or simply to have a rule drafted which would permit such reference by a vote of the Senate?

Mr. SUTHERLAND. Mr. President, the resolution probably would be construed as directing an obligatory rule. I think myself it ought to be a permissive rule, that the Senate may do it in any particular case. However, if the rule should be obligatory, the Senate, of course, could at any time suspend it and try any particular case without referring it to the Judiciary Committee.

Mr. REED. I have simply this suggestion to make: It seems to me it would be better to have that rule, if it is reported, so drawn that proceedings of this nature should not go to a committee except by an order of the Senate, leaving, at least in some form, a discretion in the Senate that could be exercised without repealing the rule.

I think there is a great deal of wisdom in the proposition advanced by the Senator from Utah, but I think the modification I have suggested or something of that nature ought to be embodied in it.

Mr. BACON. Mr. President, I would suggest to the Senator from Utah that there ought to be a change in the phraseology of one part of his resolution. I do not discuss in any manner now the question as to the propriety of the resolution, but the propriety of a change is because there is no such officer known to our law as a Cabinet officer. The designation of the officer as a Cabinet officer can not be found in the law, and could not be created as such by Congress, because Congress could not impose upon the President the selection of those whom he will choose to be his advisers. He has chosen voluntarily without any statute to have the heads of the departments as his constitutional advisers. They are constitutional only in the sense that the Constitution says he may require services at the hands of the heads of departments in the giving of information, and so forth. These gentlemen are heads of departments, and the phraseology of the resolution, it seems to me, should be changed to conform thereto.

There is in other countries a similar body, which is in either of those countries in fact a cabinet. Such cabinets are in fact the ruling influences of the governmental affairs of the country, the executive being merely nominal. It is different with us. The Executive here is an actual Executive, and these are his advisers simply, and we call them Cabinet officers merely by courtesy. It is well recognized who they are when we speak of them as such, and there is no impropriety in speaking of them as such as a matter of courtesy; but in a legal document, especially one that seeks to prescribe the method by which impeachment proceedings should be taken against them, we should be accurate. It seems to me the only proper phraseology there would be to use the words "heads of departments" instead of "Cabinet officers."

Mr. SUTHERLAND. I am well aware of the correctness of what the Senator from Georgia says. The law designates the so-called Cabinet officers as heads of departments. I have chosen in the resolution, which, of course, is not a rule, but simply a direction to the Judiciary Committee to prepare a rule, to use the term by which they are popularly known rather than the name by which they are legally known, and I take it the Judiciary Committee will have no difficulty in understanding what is meant.

Mr. THORNTON. Mr. President, I ask that the resolution submitted by the Senator from Utah, referring to the future conduct of impeachment proceedings, be read again to the Senate. There are many who, like myself, do not understand what its effect would be if adopted.

Mr. KENYON. Mr. President, I rise to a question of order.

The PRESIDENT pro tempore. The Senator from Iowa rises to a question of order. The Senator will state it.

Mr. KENYON. It is that this debate is not in order as a part of the unfinished business.

The PRESIDENT pro tempore. Debate can proceed only by unanimous consent, the resolution having been referred.

INTERSTATE SHIPMENT OF LIQUORS.

The PRESIDENT pro tempore. Under the special order of the Senate the consideration of the bill (S. 4043) to prohibit interstate commerce in intoxicating liquors in certain cases will be proceeded with. The bill will be read.

The Senate, as in Committee of the Whole, proceeded to consider the bill, which was read, as follows:

Be it enacted, etc., That the shipment or transportation in any manner or by any means whatsoever of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, including beer, ale, or wine, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof into any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, or from any foreign country into any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, directly or indirectly, or in any manner connected with the transaction, to be received, possessed, or kept, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, enacted in the exercise of the police powers of such State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, is hereby prohibited.

Mr. SANDERS. Mr. President, Senate bill 4043, entitled "A bill to prohibit interstate commerce in intoxicating liquors in certain cases," stripped of its verbiage, would read:

Be it enacted, That the shipment of intoxicating liquor from one State into any other State by any person, to be received or used in violation of any law of such State, is hereby prohibited.

SEC. 2. That all intoxicating liquors transported into any State shall, upon arrival within the boundaries of such State and before delivery to the consignee, be subject to the operation of the laws of such State.

This bill relates to nothing but the shipment of intoxicating liquors from one State into another State where it is to be sold in violation of State laws concerning same.

It does not relate to the personal use of liquor. The personal-liberty cry does not therefore properly come into this discussion. With only a few exceptions, none of the States have yet attempted to prohibit the drinking of liquor, and it is not the intention of the advocates of this bill to ask the Federal Government to take such action in advance of the States.

Parts of States to which State prohibition laws do not apply, commonly known as "wet territory," are not affected by this bill.

The disposition of the States to limit or prohibit the sale of liquors is so general that the question can not be considered a sectional or local matter. Every State has more or less territory where the sale of intoxicating liquors is prohibited. This is commonly known as "dry territory."

Eight States have State-wide prohibition. Only six States have more wet than dry territory. These wet and dry States are scattered over the entire country.

As an evidence of the demand for such legislation, it is sufficient to call attention to the fact that 71 per cent of the area of the United States is now under State prohibition laws, and by the further fact that a majority of all the people of the United States live in dry territory.

The evils attending the use of intoxicating liquors are so well known and so generally admitted that nothing need be said on that part of the subject in the consideration of this bill.

The State I have the honor to represent is perhaps a fair example of the various States to which this bill applies is a

greater or less degree. It has a State-wide law against the sale of intoxicating liquors to persons within the State. These laws are enforced in most of the counties fairly well, but are violated in the many counties, especially those having large cities, on account of the corrupting influence of the large number of mail-order liquor houses in these cities, which are in the alleged business of selling to persons in other States. The violations of the law over the State are almost all by keepers of soft-drink stands, hotels, boarding houses, restaurants, livery stables, and bawdyhouses. To these are to be added the bootlegger class, made up of loafers and other like characters.

The centers of liquor distribution were originally the saloons. They, with their attending evils, have been banished from the larger part of the country. But with their going there has grown up what is known as the "mail-order liquor business." This is even more insidious than the saloons. It came as an afterthought.

Persons who were formerly in the saloon business in one capacity or another are now running mail-order houses or are engaged in the unlawful sale of liquor as described. The supply of liquor for almost all this business is traceable to the interstate shipment of liquor for sale in violation of the State law.

Persons in this business seek opportune times for getting liquor from the express offices, and secrete it in all manner of ways, then sell it clandestinely, making it exceedingly difficult for State officials to enforce the State laws. Under the present Federal laws this liquor is not subject to the State laws until it is delivered to the consignee, and there is, therefore, no opportunity for its detention while in transit after it comes into the State or while it is in the express office awaiting delivery.

In smaller towns numbers of persons order whisky by mail from outside of Tennessee and have it shipped to themselves in small quantities by express. The large mail-order whisky houses flood the State with their advertising matter for the purpose of getting this trade. The various wholesale liquor dealers who ship into Tennessee keep traveling representatives in the State, who visit the dealers and bootleggers and take orders from them for whisky. These orders are transmitted by the agent to his house, and the goods are shipped directly to the person ordering the same. The agent collects from the purchaser at such times as they may agree upon.

The quality of liquors sold in Tennessee at this time is generally below the standard. Large quantities of high-proof spirits are shipped into the State, which are taken by the various rectifiers and reduced in proof and, in most instances, foreign substances are added, rendering the whisky inferior in quality and frequently deleterious to the consumer, physically and mentally. This is done because of the large increase in quantity secured thereby, which largely increases the profit. The States are not able to protect their people from fraud and imposition of this kind.

I suppose no one will say that intoxicating liquors should be sold to minors. The States all have laws against such sale. Minors are not allowed in saloons. The mail-order liquor houses send their advertising matter to minors, and in this way minors everywhere are led to buy liquor. On account of this children come out from under the restraint and protection of the law and practically from under parental restraint.

This mail-order business goes on all over the country. An example of its volume is found in the report of the Interstate Commerce Commission, opinion No. 1596, as to the business of this kind in the Southern States, showing a total sale of more than 6,000,000 gallons annually. This would indicate that the total of this mail-order liquor business for the whole United States is about 20,000,000 gallons per annum.

I now read from the report:

> The mail-order business in packages of liquor in this country had its beginning about a quarter of a century ago. At that time it was of small proportions, very few packages being shipped, and those only to short distances. It was the spread of the prohibition movement that gave vitality to this character of traffic in liquor. Local option first drove the dealers from the localities where they had carried on a retail business to settle on the outskirts of the proscribed territory and ship liquor into it. As the prohibitive area spread the shippers were driven farther and farther back, but their business became more extended in the territory covered and larger in the volume of traffic. With State-wide prohibition came the interstate traffic in liquor. The decision of the Supreme Court that this traffic was interstate and, therefore, superior to interference by the State governments gave the industry a tremendous impetus and established the express companies as the carriers of practically the whole of this traffic.
>
> The proportions of the business throughout the country at the present time can not be estimated with any degree of accuracy, but figures presented by the Southern Express Co. may be made the basis of a fair approximation. Jacksonville, Fla., probably the largest shipping point for liquor in the South, sends out between three and four thousand packages of 1 or 2 gallons daily, or a total of about one and one-half million gallons a year. Chattanooga ships about 786,000 gallons; Richmond, 546,720 gallons; Petersburg, 268,128 gallons; Pensacola, 267,760 gallons; New Orleans, 255,856 gallons; Augusta, 215,150 gallons; and Norfolk, Va.; Cairo, Ill.; Emporia, Va.; Louisville, Ky.; Portsmouth, Va.; Roanoke, Va.; and Savannah, Ga., ship more than 100,000 gallons each annually.

This report also states:

> These packages are sent express, charges paid, direct to the consumers on orders, in most cases, paid for in advance of shipment. The movement is much more active in the South than in other sections of the country, partly because of the extent of the prohibition territory in that section, partly because of the large quantities of very cheap whisky manufactured and shipped there for the consumption of the negro population. While it is not the function of this commission to be influenced in its conclusions by the moral aspect of the question, it is impossible not to recognize in this traffic one of the important factors in the race problem of the South—the evil spirit back of that problem in more ways than one. Generally speaking, the evidence presented at these hearings went to show a distinct cleavage in the industry; in the West a high grade of liquor was shipped and a better clientele appealed to; in the South both whisky and consumers were on a considerably lower grade.

The following letter, received from the largest mail-order liquor house in Chattanooga, is an acknowledgment of the fact that they know themselves to be shipping liquor into other States, to be sold in violation of the laws of such States. It also shows the extent of this pernicious business:

> Allow me to write you in behalf of our business. Chattanooga is the second largest mail-order whisky center in the South, and if the Kenyon bill passes the House, which comes up before the Senate December 16, it means that our business will practically be destroyed, and I am writing to ask that you carefully consider this matter.
>
> We certainly will appreciate anything that you can do for us, and with best wishes I remain,
>
> Yours, very truly, ——— ———.
>
> P. S.—We have 150 white employees here in our store in Chattanooga. This will give you some idea of the magnitude of the mail-order business out of Chattanooga.

The sale of pistols is prohibited by every State, but mail-order houses sell and ship them into every State in the same way as intoxicating liquors, and not infrequently a man orders them by the same mail, receives both by the same express, and a homicide follows.

I notice with great satisfaction that in the parcel-post regulations just issued both whisky and pistols are declared nonmailable.

This bill is not all that is wished by the temperance people of the country. It only stops the business of selling liquor within dry territory by persons outside that territory in violation of law. The evil of interstate sales to consumers yet remains. When it is remembered that the Federal Government can absolutely prohibit all interstate shipments of liquor the liquor manufacturers and dealers should be gratified that the more advanced proposition of prohibiting the interstate shipments of liquor to consumers is not in this bill.

If a mail-order man feels aggrieved he has his remedy. He can require cash in advance for both the price of the liquor and the freight on same. Then he is in no danger of loss by reason of the intent of the consignees being of an unlawful nature.

As it is now no person in Tennessee can lawfully sell intoxicating liquor in Tennessee, but a person in Kentucky can sell in Tennessee. Should a citizen of Kentucky have more rights in Tennessee than a citizen of Tennessee? No man should have the personal liberty of violating the laws of any State.

As it is a State can protect its citizens against one another, but not against outsiders. A State can regulate the quality of liquor sold within the State, but it can not regulate the quality of liquor sold from outside the State.

It is the moral duty of the Federal Government to protect the States in the enforcement of their laws. There is here an invasion of State rights and a helplessness of States to protect themselves. They must therefore look to the National Government for relief. That is the object of this bill.

A Senator from New York once said:

> No man can overestimate the importance of maintaining each and every one of the sovereignties of the States, and no one can overestimate the importance of maintaining the sovereignty of the Nation.

Applying this statement to the matter under discussion, I wish to add, the sovereignty of the Nation is invoked to maintain the sovereignty of the States.

Mr. McCUMBER. Mr. President, the purpose of this bill is to meet a condition. The condition is of the same character as that which necessitated and brought about the enactment of the pure food and drug law. The statutes of practically every State in the Union contained enactments designed to protect the people of such States against fraudulent, adulterated, misbranded, or deleterious foods and drugs. The purposes of each State law were broad and comprehensive, and had it not been for certain Federal interference would have been sufficient to accord proper protection to the people of such State.

The construction of the interstate-commerce clause of the Constitution to the effect that the jurisdiction of the Federal Government over an article entering into interstate commerce continued, not only until the article had been received by the

consignee, but also until it had actually passed out of his hands and mingled with the mass of the property of the State, rendered the State law ineffective as a preventive measure. The law could punish the innocent retail merchant but could not prevent the commission of the offense, nor reach the source of the evil, the manufacturer, in another State. The greater proportion of all food and drug products were consumed in States other than that in which they were manufactured. They came from the factory often adulterated, often mislabeled, and were quite often deleterious to health.

The retail merchant had a right to assume, when he ordered a few hundred dollars' worth of maple sirup, and when it came to him marked "Pure Vermont Maple Syrup," that he was receiving just what he ordered and not colored and flavored glucose. The State could with very little grace impose a fine upon an innocent retailer and make him suffer for an offense committed by another upon him. Nor did this vicarious punishment in any way remedy the wrong which had been perpetrated upon the consumer. It was impossible for the State authorities to watch every train at every station within its borders every day in the year to ascertain what goods were being imported into the State which were condemned by their laws. The condition demanded a remedy. The pure-food law was introduced and passed to meet the condition. It has been eminently successful.

When I drafted the bill which became the final law with almost no change, I did not draft it along the lines of this bill to prohibit interstate commerce in intoxicating liquors in certain cases. I had examined the authorities governing the question which had been decided at that time, and I believed that a proposal that the articles should become subjected to the police powers of a State the moment they crossed the line and before they reached the hands of the consumer of doubtful constitutionality. At that time the courts had gone so far as to hold in the Leisy against Hardin case, One hundred and thirty-fifth United States, that the power of Congress over interstate commerce extended not only from the time the consignor began to ship the goods to the time of their delivery, but also followed them in the original packages until they had passed by sale out of the hands of the consignee.

Nor did those who supported the pure-food act feel entirely safe at that time in being able to meet the claim that it would be a delegation of congressional power to authorize the divers State laws to lay hold upon an article of interstate commerce the moment it crossed a State line.

There was what we considered a much safer, if not sounder, foundation for a Government law which should meet the necessities of that situation. It had been held in many cases that the power of Congress over interstate commerce was exactly of the same character and potency as the power of Congress over foreign commerce; that under the authority of Congress to regulate and control foreign commerce Congress had again and again enacted legislation which absolutely prohibited certain kinds of goods from entering into commerce. The courts had clearly established the doctrine that the right to regulate commerce carries with it in proper cases the right to prohibit commerce. The lottery case had already been decided, One hundred and eighty-eighth United States, page 321.

In this case the court say:

> If lottery traffic carried on through interstate commerce is a matter of which Congress may take cognizance and over which its power may be exercised, can it be possible that it must tolerate the traffic and simply regulate the manner in which it may be carried on? Or may not Congress, for the protection of the people of all the States under the power to regulate commerce, devise such means within the scope of the Constitution and not prohibited by it as will drive that traffic out of commerce among the States?

The court decided that Congress had such power, that it could so outlaw a commodity for the protection of the people of all the States.

Justice Harlan in that case states:

> What clause (in the Constitution) can be cited which in any degree countenances the suggestion that one may of right carry or cause to be carried from one State to another that which will harm the public more or less? * * * Surely it will not be said to be a part of any one's liberty, as recognized by the supreme law of the land, that he shall be allowed to introduce into commerce among the States an element that will be confessedly injurious to public morals.

Again:

> As a State may, for the purpose of guarding the morals of its own people, prohibit all sales of lottery tickets within its limits, so Congress, for the purpose of guarding the people of the United States against the widespread pestilence of lotteries, and to protect the commerce which concerns all the States, may prohibit the carrying of lottery tickets from one State to another.

Mr. SUTHERLAND. Mr. President——

The PRESIDENT pro tempore. Will the Senator from North Dakota yield to the Senator from Utah?

Mr. SUTHERLAND. Will it interrupt the Senator if I ask him a question?

Mr. McCUMBER. I will allow the interruption at this time, but I wish to close before half past 1, and therefore I may not be able to yield to all interruptions.

Mr. SUTHERLAND. The Senator said a moment ago, as I understood him, that the power to regulate interstate commerce is of the same potency as the power to regulate foreign commerce.

Mr. McCUMBER. That is the statement, Mr. President.

Mr. SUTHERLAND. Does not the Senator recognize that while the language of the constitutional provision with reference to interstate and foreign commerce is the same the objects to which the language is directed are different; that the Government of the United States in dealing with a foreign nation deals in its sovereign capacity; that it may absolutely prohibit the importation of any goods from foreign countries or from any particular foreign country, but that it could not, it seems to me—I ask the Senator his view of it—absolutely prohibit the transmission of all goods from one particular State to another particular State?

Mr. McCUMBER. Congress may prohibit importations or fix any condition upon any foreign importations. The power of Congress over interstate commerce, as over foreign commerce, is plenary, is full and complete; and while Congress may not, and I have not claimed it is necessary that Congress may prohibit commerce in any and all things, there are certain things in which, exercising its plenary power, it may prohibit to enter interstate commerce.

Mr. SUTHERLAND. Congress may pass an embargo against the importation of all goods from France to this country, but does the Senator think that Congress can pass a law putting an embargo upon all goods from New York to any other State?

Mr. McCUMBER. Not by any means, as I will show before I get through; but Congress can prohibit some things from entering into interstate commerce, and intoxicating liquors is one of the things.

We were able to apply this reasoning directly to the pure food and drug act. No citizen had a right under the Constitution to use the channels of commerce to deceive or injure others. That will apply to this case. He had no inherent right to defraud the people of another State by selling to its citizens an article, which was falsely labeled or adulterated, for the genuine article.

And so we invoked the inherent power of Congress to prohibit entirely interstate commerce in any article designed or calculated to deceive. We held that Congress had the power to prevent the citizens of one State from perpetrating a fraud upon either the pocketbook or the stomach of the citizens of another State. This wholesome law has been upheld by the courts.

Mr. President, I have read over most hurriedly the legal arguments both pro and con given before the Committee on Interstate Commerce. To understand the force of those arguments one must understand the purpose of the bill and what condition it is sought to meet. The condition is almost the same as that which presented itself as the reason for the pure-food and drug act, except that in the latter case the law was designed to protect the citizens of one State against the unlawful, fraudulent act of a citizen of another State, while in the present case the design of the law is to protect the citizens of a State against the crimes and unlawful acts of its own citizens, committed in conjunction with citizens of another State. The desire of the State is not alone to punish for the offense of the illegal sale of liquor, but to prevent the illegal sale. It has been found impossible to effectively enforce the prohibition laws of a State if the State is compelled to await its action until the offense prohibited has been committed, the property sold and mingled in the mass of the property of the State. The State seeks to reach the property before it has reached the hands of the consumer—to reach it in bulk. It desires to issue its process against the property itself and to determine beforehand whether or not it is there for an unlawful purpose; and if so, to enjoin that purpose—to proceed against it by an action in rem and condemn it as a nuisance.

This bill is not a bill to prevent interstate commerce in intoxicating liquors. The State of North Dakota is a prohibition State, made so under its constitution. So long as that law remains a law of the State of North Dakota it is my duty as a Representative of that State to assist in the enforcement of that law and to assist in the enactment of any legislation by the Federal Government which is necessary for the State to enforce its police powers. I say our State is a prohibition State; but it is prohibition only in the sense that it prohibits the sale of intoxicating liquors as a beverage. It prevents no man and no family from importing any liquors and consuming

them in the home or elsewhere. It is not aimed at the right to consume liquor, but is leveled against the open saloon. This law will not affect the importation of intoxicating liquors into the State to be used as they always have been used since we became a State. Its only effect will be to assist the officials of the State in enforcing the prohibition law against blind piggism, bootlegging, and so forth.

For the same reason that the State laws were ineffective to prevent a contemplated breach of them and called for a Federal pure-food act, so the State laws are ineffective to properly protect the people against the evils which the majority of the people of such State say flow from the sale of intoxicating liquors. This is so because the State is often compelled to await action until the sale has been completed and the injury has been done.

Assuming that the State has the right to enforce its own laws by such method as will be effective, namely, by an action in rem against the property before it reaches the consignee or the consumer, we are met directly with the question whether Congress can legally subject an article in interstate commerce to the police power of the State while it is still in transit or before it has mingled with the mass of the property of the State.

In the consideration of this question we must admit every claim made by the opponents of the measure which have had the real sanction of the Supreme Court of the United States. We must admit that the court has held that an article is in interstate commerce until it has actually been sold in original packages, and that until it has been so sold the State laws have no control over it. To be sure, in a subsequent case the court held that Congress could authorize the State laws to attach to the property before its final sale in original packages and after its delivery to the consignee; that the sale was merely an incident to commerce and not, strictly speaking, commerce itself, and therefore the Congress could relinquish to the State authority over the article over which Congress might, if it saw fit, retain exclusive control. That is my construction of the Rahrer case.

The court has also held that Congress has no authority to delegate its power over interstate commerce to a State.

I, however, base my claim of the constitutionality of this proposed law upon a legal proposition which, I think, was not discussed, or at least but barely touched upon, in the argument before the committee.

First. That Congress has power to absolutely prohibit interstate commerce in intoxicating liquors. That is my position and the fundamental basis of my argument to uphold the constitutionality of this proposed measure.

Second. Having power to prohibit interstate commerce in intoxicating liquors it has the lesser power, which must be included in the greater, of allowing interstate commerce in intoxicating liquors under certain conditions, and those conditions may be that the commodities shall be subjected to the police powers of a State the moment they cross the State line; not that the State law shall be the effective law and be approved by Congress, but Congress shall relinquish its hold upon the articles upon certain conditions when they arrive within a State.

Mr. BORAH. Mr. President——

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from Idaho?

Mr. McCUMBER. I yield, Mr. President.

Mr. BORAH. The proposition which the Senator has just been stating is covered, I take it, by the first part of the bill; that is, section 2.

Mr. McCUMBER. Yes.

Mr. BORAH. That is a prohibition against shipping liquors into a State where they are intended to be used in an unlawful way.

Mr. McCUMBER. Yes.

Mr. BORAH. It seems to me that Congress has that power, and I am in favor of exercising that power. But when you come to the second section it has occurred to me that there is a clause in that section which militates against the strength and effect of the first section and might involve a question of constitutionality. I do not see the necessity of section 2, and I do not believe it to be constitutional.

Mr. McCUMBER. I do not think the second section is at all necessary, and I think it is of doubtful constitutionality in one of its provisions; but I do not desire to argue that question at this time. If the act is made clear that we do not put into effect a State law when the commodities arrive in such State, or do not delegate our authority in any manner to a State, but simply provide a condition under which the commodity may lose its commercial character, and thereby become subject to the laws of the State, the second section may be so framed as to be held constitutional.

Mr. KENYON. Mr. President——

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from Iowa?

Mr. McCUMBER. I yield to the Senator.

Mr. KENYON. I simply want to say, Mr. President, to the Senator from North Dakota that section 2 is the committee amendment.

Mr. McCUMBER. I understand that.

Mr. KENYON. I have thought of the same suggestion that the Senator from Idaho [Mr. BORAH] has made. While the first section prohibits the shipment of intoxicating liquors with the intention to violate the law of the State, the second section would seem to recognize the transportation of liquors and at the same time apply the police powers. There is some incongruity between the two sections.

Mr. McCUMBER. One would seem to rather transfer the congressional authority over to the State, and that construction we should avoid, if possible.

Mr. BORAH. Just a word, Mr. President.

The PRESIDENT pro tempore. Does the Senator from North Dakota yield further to the Senator from Idaho?

Mr. McCUMBER. I yield.

Mr. BORAH. As I have said, so far as the first section is concerned, it seems that the bill provides that Congress shall retain the control of the commerce; it says it shall not go into a State under certain conditions; it fixes the rate and regulation itself; but in the second section it is provided:

> That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale, or storage therein, shall, upon arrival within the boundaries of such State or Territory and before delivery to the consignee—

The prohibition which has been made in the preceding section is, in a sense, abrogated in the second, and liquor is recognized as an article of commerce. Recognizing it as an article of commerce, and one which may go into the State, then the question is, Can you stop it and turn it over to the State before it is finally delivered to the consignee? In the first section you make it contraband of commerce when it is being shipped for unlawful use. In the second you recognize it as an article of commerce, but turn it over to the State before it is delivered to consignee. I do not think this aids the law in its efficiency, and I believe it unconstitutional.

Mr. McCUMBER. The whole question is our authority to attach a condition to it in order to give it a right to enter into interstate commerce.

Third. That imposing the condition that the goods shall be so subjected to the laws of a State is not in any sense whatever delegating authority to the State to control by its legislation interstate commerce. It is the penalty prescribed in the condition by congressional action.

Fourth. That having a right to prohibit interstate commerce in intoxicating liquors it has the lesser right, which is included in the greater, of declaring as a condition for the allowance of the article to enter into interstate commerce that it shall be divested of its Federal protection as a commodity in interstate commerce whenever certain conditions arise, and that the condition which will so divest it may be that it is intended to be used in violation of the police powers of the State.

This bill reads:

> That the shipment or transportation in any manner or by any means whatsoever of any spirituous, vinous, malted, fermented, or other intoxicating liquor of any kind, including beer, ale, or wine, from one State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof into any other State, Territory, or District of the United States, * * * which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, directly or indirectly, or in any manner connected with the transaction, to be received, possessed, or kept, or in any manner used, either in the original package or otherwise, in violation of any law of such State, * * * is hereby prohibited.

That is the gist of the proposed law.

Mr. BORAH. Mr. President——

The PRESIDENT pro tempore. Does the Senator from North Dakota yield further to the Senator from Idaho?

Mr. McCUMBER. I yield, Mr. President.

Mr. BORAH. What is the necessity of anything further after that is done?

Mr. McCUMBER. What is the question?

Mr. BORAH. I say, what is the necessity of anything further in the bill after liquor is prohibited from being shipped into the State? What is the necessity of section 2?

Mr. McCUMBER. I had stated, if the Senator will pardon me, when he first called my attention to it, that I doubted the constitutionality of section 2 and that I did not see the necessity of it. It was no part of the bill when it was introduced, but is a committee amendment. I think it is rather dangerous than

beneficial. It may be open to the construction that it is a delegation of congressional authority.

Mr. BORAH. I did not catch the Senator's full statement.

Mr. McCUMBER. Mr. President, I stand upon the broad proposition that all of the provisions of the bill which subject the article to the laws of the State are simply conditions imposed upon the article as conditions precedent to its right to enter the channels of interstate traffic. That is under section 1 of the bill.

Under the first proposition, this question naturally arises: Have the citizens of one State any inherent right to do a business in another State, which business is specifically prohibited by the constitution or laws of the State in which it is to be carried on and is denied to every citizen of that State? I can hardly conceive that anyone will claim such a right. The majority of the people of the State of California do not like the Celestial. The Representatives of that State insist upon a national law which will prohibit the Chinese from coming into California. Now, a great many Californians want the people there. They want them as laborers. They want them in the fruit-picking season. But when they insist on their personal privilege to hire whomsoever they will, the majority say, "These people debase our State citizenship and we will not have them." The majority of the people of North Dakota, of Kansas, of Oklahoma, say they do not want intoxicating liquors shipped into their States for sale; that the sale of liquors injures their citizens. What moral right has California to insist that no Chinaman shall come into her territory because of his bad influence and then object to North Dakota or Oklahoma saying that California wines and other intoxicants shall not come into their respective territories because of their bad influence?

I do not for one moment question that where the right of Congress under the interstate commerce law attaches to a commodity it will prevail over any police power of the State. But what I do claim is that in a certain class of commodities, which are more or less under the ban of public opinion and which a great proportion of the people do not recognize as property whatever, Congress has a right to prohibit such commodities from entering into interstate commerce, and the right of prohibition carries with it the lesser power to impose conditions.

Suppose that nitroglycerine is imported into any State. The State authorities have ample evidence that it is to be used for the purpose of blowing up bridges or great works under construction. Is Congress compelled to say to the State authorities, "You must not lay your hands on this article until it has reached the hands of the consignee; you must then keep watch over the consignee to see that he does not use it for the purpose intended, and if you fail, and surreptitiously he gets some of it into the hands of a McManigal and a public building is blown up and many lives lost, you must content yourselves with punishing the perpetrator"? That punishment does not bring back the lives that are lost. The punishment of the blind pigger—the illicit seller—does not rehabilitate the homes he has destroyed nor alleviate the influence for lawlessness which his action has created. I am not asking whether the State can insist on applying its law to an article before it leaves the hands of a common carrier, without permission of Congress, but can Congress relieve the State from this onerous condition? It is a question of the authority of Congress to grant, not of the State to demand.

Has Congress the right to prohibit intoxicating liquors from entering into interstate commerce? If it has no such power, then I am willing to concede that it has no power to subject that liquor to the condition sought in the bill. If intoxicating liquors as a commodity have inherently all of the rights that clothing or bread could have, then we may well doubt the constitutionality of this law.

I know that courts have held that intoxicating liquors are recognized and legitimate subjects of interstate commerce; that it is not competent for any State to forbid any commercial carrier to transport such articles from a consignor in one State to a consignee in another. But the courts have never held that Congress could not cease to recognize them as legitimate subjects of interstate commerce. I insist that Congress may cease to recognize liquors as proper subjects of interstate commerce. While it is held that it is not competent for a State to forbid any common carrier to transport such articles from a consignor in one State to a consignee in another State, it has not been held that Congress has not that authority.

Congress has again and again assumed a right to determine that a certain commodity should be deprived of its right to enter the channels of commerce. In 1897 and in the Payne bill of 1909 Congress prohibited the importation of any goods that were made in whole or in part by convict labor. Here the provision applies, even though there is no evil whatever inherent in the goods themselves. We do not need to go that far in this case.

Mr. WILLIAMS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from Mississippi?

Mr. McCUMBER. I do.

Mr. WILLIAMS. If the Senator from North Dakota will pardon me, while he is on that point I desire, in furtherance of his argument, to show how far Congress has gone in the policy of cooperating with rather than obstructing the States in the execution of their police powers.

In the first decade of this century this state of affairs existed: Some people in some of the slave State were freeing their negroes and carrying them to free States, carrying them into free States which had laws against the residence of free negroes within those States. Congress passed a law forbidding the importation of free negroes into any State where they were not permitted by law to reside, and that law was signed by no less a strict constructionist than Thomas Jefferson himself.

Mr. McCUMBER. I thank the Senator for calling my attention to that fact.

Mr. President, can anyone doubt for a moment, if the power of Congress over interstate commerce is coextensive with its power over foreign commerce, and under its authority to regulate foreign commerce it prohibits the entry of any goods into the United States which were manufactured by foreign convicts, that it can not prohibit any interstate commerce in goods which make convicts?

We have laws which have been in force more than 50 years providing for a forfeiture of any vessel which shall be brought into the United States intended to be used in the slave trade.

By section 241 Congress prohibited the importation of the mongoose, the so-called flying foxes or fruit bats, the English sparrow, the starling, and other birds and animals, and provides that all such birds or animals upon arrival at any port in the United States shall be destroyed or returned at the expense of the owner.

Section 242 prohibits a common carrier from transporting from any State any foreign animals or birds the importation of which is prohibited, or dead bodies or parts thereof of any wild animals or birds where such animals or birds have been killed or shipped in violation of the laws of the State.

I do not know that that particular section has been passed upon by the Supreme Court, but it is a law of Congress in force at the present time.

Mr. WORKS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from California?

Mr. McCUMBER. I yield, Mr. President.

Mr. WORKS. Apparently the Senator from North Dakota is discussing this bill upon the theory that it expressly forbids the shipment of intoxicating liquors into dry territory. Does the Senator so understand it?

Mr. McCUMBER. Oh, no. I have not discussed it on that theory, but have discussed the conditions under which liquors would be shipped.

Mr. WORKS. The weakness of the bill, Mr. President, it seems to me, is the very fact that it does not do that very thing. The qualifying clause in the first section of the bill is quite material and takes away most of the strength and efficacy of the bill itself by the use of this language:

> Which said spirituous, vinous, malted, fermented, or other intoxicating liquor is intended, by any person interested therein, directly or indirectly, or in any manner connected with the transaction, to be received, possessed, or kept, or in any manner used, either in the original package or otherwise, in violation of any law of such State, Territory, or District of the United States.

That is to say, in order to convict under this statute, if enacted as such, you must prove that the person to whom it was shipped or by whom it was possessed had the intention at the time to sell it unlawfully.

I am not satisfied, Mr. President, to limit a law of this kind to that extent unless we are compelled to do so by the Constitution. A bill so worded will have very little effect, it seems to me, in checking or preventing the evil we are trying to reach.

Mr. McCUMBER. The Senator must admit that if Congress has power to absolutely prohibit, of course it has the power to allow with any conditions it sees fit to impose.

Mr. WORKS. Mr. President, I have no doubt of that at all. What I question is whether Congress should stop short of absolute prohibition against the shipment of liquors into dry territory.

Mr. McCUMBER. That can be answered by the statement that probably not a single State in the Union prohibits the use of liquors in the State. Whenever a State goes so far as

to absolutely prohibit the use of liquors in the State, then Congress may properly, under its authority, prohibit their importation into that State, but I know of no State in the Union that has gone to that extent. They do not prohibit the personal use of intoxicating liquors; they only prohibit their being sold contrary to law.

Mr. WORKS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from North Dakota yield further?

Mr. McCUMBER. I yield.

Mr. WORKS. All the States make certain exceptions in the case of the sale of intoxicating liquors. To that extent the shipment of the liquors would not be in violation of the law of the State. No doubt Congress in enacting a law of this kind should make that same exception, but certainly it should go no further than that.

Mr. McCUMBER. I do not think Congress should go further than the laws of the States themselves go. This bill, if it is passed and becomes a law, will be for the benefit of the States, and therefore we should not under our general power and authority over commerce assume to say that certain goods should not go into the State, when the State law welcomes them into the State under certain conditions. All we should do is to say that if we allow them to enter into interstate commerce it should be with the understanding that they should not violate the conditions imposed by the State.

Mr. LODGE. Mr. President——

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from Massachusetts?

Mr. McCUMBER. Certainly.

Mr. LODGE. In connection with the point made by the Senator from California, which seems to me to have a great deal of force, how is it to be determined what is the intention of the person to whom the liquor is shipped? That compels the shipper to know the intention of the person. It seems to me that is going to be a matter of great difficulty to determine.

Mr. McCUMBER. That is getting at the merits. We are now discussing the authority of Congress. I suppose we will determine the intention of either party to a transaction in the courts, the same as we always determine those things. It will simply be a matter of evidence.

Mr. BAILEY. But Congress could not make the Senator guilty of a crime for some intention which I had in my mind.

Mr. McCUMBER. Not at all.

Mr. BAILEY. That is what I understood to be the question of the Senator from Massachusetts.

Mr. LODGE. That was my precise point. They make the shipper guilty of a crime because he fails to know the intention of the person to whom he ships.

Mr. McCUMBER. Oh, no.

Mr. LODGE. It seems to me it would be very difficult to get at.

Mr. McCUMBER. I do not think the Senator has read the bill, or he would not make that assertion.

Mr. LODGE. I have read the bill through two or three times.

Mr. McCUMBER. I would ask the Senator to quote any portion of the bill which makes the shipper responsible for a crime on account of an intent in which he did not take part.

Mr. LODGE. The bill says that the shipment or transportation of the articles named——

Mr. McCUMBER. Is prohibited. That is not a crime——

Mr. LODGE. Is prohibited. If the bill is without a penalty clause, then it is——

Mr. McCUMBER. It is not intended to create a penalty. It is intended, Mr. President, to divest the shipment of its interstate character whenever it can be ascertained in a court proceeding in any State that it is within that it is sought to be used in violation of the laws of that State.

Mr. LODGE. Does the Senator mean that the shipper who ships in violation of this act is not subject to any penalty?

Mr. McCUMBER. If he desires to sell on credit entirely, and depends on a lien on the property in the State in which it is to be paid, he might possibly lose the property in an action in rem.

Mr. CRAWFORD. Mr. President——

The PRESIDENT pro tempore. Does the Senator yield to the Senator from South Dakota?

Mr. McCUMBER. I yield.

Mr. CRAWFORD. I have been reading the bill, and I simply want to ascertain if my impression of it is correct. I do not understand that it is a criminal statute at all.

Mr. McCUMBER. Not at all.

Mr. CRAWFORD. It does not undertake to provide any penalties at all.

Mr. McCUMBER. None.

Mr. CRAWFORD. But fixes the status of such liquors as come within the inhibition of the act.

Mr. WORKS. Mr. President——

The PRESIDENT pro tempore. Does the Senator yield to the Senator from California?

Mr. McCUMBER. I will yield this time, and then I desire to finish my remarks.

Mr. WORKS. The trouble is not, as suggested by the Senator from Massachusetts, that the burden is on the shipper of the liquor to prove or disprove the intention of the person to whom it is shipped, but that the burden is imposed upon the prosecution in a case of that kind, and, in order to convict, the prosecution must prove the intention of the person to whom the liquor is shipped.

Mr. KENYON. Mr. President——

Mr. McCUMBER. It does not necessarily need to be the intention of the shipper. Ordinarily, it is not very difficult to prove the intent of a blind pigger, when he receives great quantities of liquor and when it is known that he is running an establishment which we designate by that name.

Mr. BAILEY. Will the Senator from North Dakota permit me to ask him a question now?

Mr. McCUMBER. Certainly.

Mr. BAILEY. I know very little about the criminal statutes of the United States; but I have an impression that there is some general provision providing a penalty where there is a prohibition or where any given act is made unlawful and there is no specific penalty attached to that act in the law prohibiting it, because, as I understand, a criminal statute without any penalty is mere brutum fulmen. It is nothing. To say a thing is prohibited and to give no sanction to your prohibition signifies nothing. I may not know as much about criminal law as a Senator ought to know, but still I know quite as much about it as I want to know.

Mr. McCUMBER. I think the Senator will undoubtedly agree that there could be no penalty unless the law itself fixed the penalty. The object of this law is to fix the status of the property itself as to what time it shall lose its character as an article of interstate commerce, and the moment it loses its interstate commerce character, the moment it ceases to be a commercial commodity, it then of itself falls under the laws of any State in which it is at that time situated.

Mr. CURTIS. Mr. President——

The PRESIDENT pro tempore. Does the Senator from North Dakota yield to the Senator from Kansas?

Mr. McCUMBER. I do.

Mr. CURTIS. It is not the intent of the proposed act to make it criminal. If the act was made criminal and declared to be a misdemeanor, without penalty, the penalty fixed by the common law must control.

Mr. CRAWFORD. I do not want to delay the Senator from North Dakota——

Mr. McCUMBER. I will say I must close my remarks before half past 1, and I therefore ask that I may proceed without further interruption.

Mr. ROOT. I wish to ask the Senator from North Dakota a question.

Mr. McCUMBER. I will yield this time.

The PRESIDENT pro tempore. The Chair will take the liberty of suggesting to the Senator from North Dakota that at 1 o'clock the unfinished business will be laid before the Senate.

Mr. McCUMBER. I presume, Mr. President, it will be laid aside that hour.

Mr. ROOT. I should like very much to know what are the views of the Senator from North Dakota as to the effect of this prohibition upon contracts. Would a contract of sale or a contract of shipment or the obligations involved in a contract of shipment be valid and enforceable if the transaction were the transaction such as described in this section, or would the contract be made invalid by reason of the fact that they are contracts to violate a law of the United States?

Mr. McCUMBER. Even under the present law of any of the States which have passed prohibition laws, a contract for the sale of intoxicating liquors to be used in violation of the laws of the State would be invalid and could not be enforced. This neither enlarges nor does it contract that rule. The contract of sale would hardly include anything concerning any disposition by the purchaser, and hence they would not be contracts to violate a United States law. If the contract was that they were to be shipped to sell in violation of a State law, of course, that would be a violation of this act.

Mr. President, I have just read section 242 of the Revised Statutes of the United States, which prohibits interstate commerce in any birds or animals killed in any State against the

laws of that State, and I hardly think anyone would contend that this prohibition is a delegation of authority to the State. It is simply a condition under which the shipments may or may not be made.

Sections 238, 239, and 240 of the penal code require that there shall be a bona fide consignee for intoxicating liquor shipments in interstate commerce; there shall be no collect on delivery shipments, but there shall be a plain branding, and so forth.

These are the conditions which we have already passed as conditions precedent to the shipment of intoxicating liquors, and we may go to any extent and require any condition that Congress in its wisdom may see fit.

Mr. President, Congress by the enactment of this bill will declare its legislative judgment that intoxicating liquors are articles which may seriously harm the public; the same as it did in the lottery cases. Where the subject on which the legislative power acts admits of a grave doubt as to whether it ought to be withheld from public use, the right to determine that question is a legislative right and not a judicial right.

Opium is useful; it is even necessary in many instances to preserve life. Its general use, however, its promiscuous sale, is productive of an evil that overbalances any good obtained from its use many hundred fold. Does anyone doubt the power of Congress to protect the people of all the States, to outlaw the article and declare it shall have no commercial right, to treat it as it would a pestilence; and could any court override that legislative judgment? Wherein does the power of Congress over one kind of an intoxicant differ from its power over another kind of intoxicant?

Suppose Congress should declare that intoxicating liquors shall no longer be considered fit subjects for interstate commerce, what authority is there to override the decision of Congress in that respect? Who is to determine when an article is to be deemed unfit for interstate commerce? Is it the court or the legislature? Under anything but the most extreme cases the answer must be that the determination of this question is a function solely for the legislature to perform. This does not mean that the legislature can act in an arbitrary manner. This does not mean that the legislature can declare that wheat or corn or clothing should not be subjects of interstate commerce—things which are absolute necessities and which are injurious to no one; but it does mean that the legislature alone has the right to determine when a given kind of business, like the sale of lottery tickets, so affects public morals, so affects public welfare, that it needs the interposition of the legislative power to protect the morals or the health of the people. There was a time when lotteries were recognized both by the law and by the public as perfectly legitimate methods of raising money. Churches were supported by them. States derived their revenues from them. The Federal Government itself incorporated them and authorized them to carry on their business. While the Federal Government was so authorizing them undoubtedly a State could not interfere with lottery tickets so long as they remained wholly subject to the jurisdiction in which they were created and had not yet been subjected to the laws of a State. But Congress, responding to an awakened public conscience, responding to the known evils of the lottery system, responding to the universal condemnation of the influence of the lottery, outlawed the system by prohibiting the interstate shipment of lottery tickets.

In the lottery case Mr. Justice Harlan said:

> If a State, when considering legislation for the suppression of lotteries within its own limits, may properly take into view the evils that inhere in the raising of money in that mode, why may not Congress, invested with the power to regulate commerce among the several States, provide that such commerce shall not be polluted by the carrying of lottery tickets from one State to another?

The decision in that case answered that question affirmatively. If that could be answered affirmatively, how can the court avoid answering this question in the affirmative? If a State, when considering legislation for the suppression of the traffic in intoxicating liquors within its own limits, may properly take into view the evils that result from the promiscuous sale of intoxicating liquors, the commission of crimes, the debauching of manhood, the destruction of the health of its citizens, the ravages of disease affecting the weakened condition of the excessive users of intoxicating liquors, why may not Congress, invested with the power to regulate commerce among the several States, provide that such commerce shall not be polluted by the carrying of intoxicating liquors from one State to another? Has not Congress the same right to recognize the injurious effects of alcoholic drinks as it had to recognize the injurious effects flowing from the sale of lottery tickets? Are there not practically as large a proportion of the public of the land opposed to the sale of intoxicating liquors as there were to the sale of lottery tickets? Have not the public, either through an awakened conscience or as the result of scientific exposition of the evils of the liquor habit, arrived at a conclusion that the evils must be stamped out in the only legitimate way, that of preventing its excessive use through the medium of public or private sale? I insist that the power to absolutely prohibit interstate commercial privilege to intoxicating liquors is clearly a congressional right, and if exercised by Congress the courts would not assume to declare that Congress had overstepped its legitimate authority. And if it has the right of prohibition, it must necessarily have the lesser right of imposing conditions.

In the case of Mugler *v.* Kansas the court says:

> And so, if in the judgment of the legislature the manufacture of intoxicating liquors for the maker's own use, as a beverage, would tend to cripple, if it did not defeat, the effort to guard the community against evils attending the use of such liquors, it is not for the courts upon their views as to what is best and safest for the community to disregard the legislative determination of that question, so far as from such a regulation having no relation to the general end sought to be attained.

In the case of Champion *v.* Ames, the lottery case, Congress specifically exercised its power to regulate interstate commerce to the point of prohibition. They held that lottery tickets could be declared by Congress to be outlawed, page 7.

Crowley *v.* Christian (137 U. S., 89) the court said:

> It is not a right of a citizen of the United States to engage in traffic in intoxicating liquors. That is not a right of a citizen of a State or a citizen of the United States.

That could not be said as to bread or as to clothing, but it can be said as to this character of property.

Again Justice Field says, in the same case:

> It is urged that as the liquors are used as a beverage, and the injury following them, if taken in excess, is voluntarily inflicted and is confined to the party offending, their sales should be without restrictions, the contention being that what a man shall drink, equally with what he shall eat, is not properly matter for legislation.
>
> There is in this position an assumption of a fact which does not exist, that when the liquors are taken in excess the injuries are confined to the party offending.

Therein it differs from the case of the sale of other articles—

> The injury, it is true, first falls upon him in his health, which the habit undermines; in his morals, which it weakens; and in the self-abasement which it creates. But as it leads to neglect of business and waste of property and general demoralization it affects those who are immediately connected with and dependent upon him. By the general concurrence of opinion of every civilized and Christian community there are few sources of crime and misery to society equal to the dram shop, where intoxicating liquors in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every State show a greater amount of crime and misery attributable to the use of ardent spirits obtained at these retail liquor saloons than to any other source. * * * As it is a business attended with danger to the community it may, as already said, be entirely prohibited or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority.

And that I claim, Mr. President, is true with reference to the authority of Congress under the general provision relating to interstate commerce to either prohibit its shipment or to allow it under any conditions it sees fit to enact.

Again, this bill does not attempt to prohibit interstate commerce in intoxicating liquors, provided they are not to be used for unlawful purposes. I do not think any one can doubt the right of Congress to say that any article may enter into interstate commerce for one purpose and may not enter into it if designed for another purpose. It might well say that a dead and putrid carcass of a steer or hog might be transported from one State to another for the purpose of converting it into a fertilizer or into axle grease, but it should not enter commerce for the purpose of being sold to the public for meat. If Congress can do this it has the equal power to say that an article entering into interstate commerce may be divested of its commercial protection upon certain contingencies. It may say that a barrel of pork entering into interstate commerce for the purpose of legitimate sale in another State shall lose its commercial character if it becomes putrid or unfit for use, unless there should be a guaranty that it should not be used for individual consumption. It has equally the power to say that intoxicating liquors may be recognized as legitimate subjects of interstate commerce, but that if at any time while in transit it becomes apparent that the use designed is an immoral one, an illegal one, it may provide that it shall be divested of that interstate-commerce protection. In that case it does not adopt the law of any State. It does not delegate its power to a State. It recognizes its own authority over the article as an article of interstate commerce and says it is no longer a subject of commerce, and being no longer a subject of commerce it falls of itself under the law of the State in which it is then located.

Mr. President, I can see nothing in the claim that Congress, by taxing intoxicating liquors gives them an interstate privilege that prohibits Congress itself from determining that they shall not enter particular States for illegal purposes. It may be admitted that by taxing the liquors or taxing the business of selling them is a recognition by Congress of their commercial char-

acter, so that a State could not hamper their shipment, but that does not prevent Congress from conditioning their shipment. By the enactment of this bill Congress will not be prohibiting interstate commerce in intoxicating liquors, but will simply enact that they shall not be imported into any State for the purpose of violating the laws of such State.

Mr. President, I believe that this bill, designed to assist the States in enforcing their own police powers by authorizing the importation of liquors into such States on the condition that they shall not be imported with intent to violate State laws, and that wherever such intent is established they shall be deprived of their commercial protection and be subjected to the laws of the State, will stand the test of any constitutional objection and that the bill should become a law.

Mr. SUTHERLAND. Before the Senator takes his seat I should like to ask him one question. Suppose this bill is passed and some citizen in a prohibition State concludes that a shipment of liquor has been made which it is the intent of the consignee to use or dispose of in violation of the law of the State, what steps or what proceedings would that citizen institute in order to enforce this law under the provisions of the law?

Mr. McCUMBER. I will give one concrete example that I find in hurriedly reading over the evidence taken before the committee. In Tennessee, I believe it was, there was shipped in the name of one person several barrels, and each barrel contained 50 pint bottles of whisky. Those we will say are found at the station. They have not yet been delivered to the consignee. The State authorities fully understand that the man who receives this special consignment of 50 pints in a barrel and several barrels can not necessarily need them all for his home consumption during his Christmas holiday, and, knowing his business to be a vender of liquors, these officials of the State may desire to seize that property before it enters into his hands—before he has had an opportunity to dispose of it—and they may, by an appropriate action—an action in rem against the property itself—desire to test the question as to whether it has been shipped for legal purposes or for the purpose of sale by this blind pigger.

Mr. SUTHERLAND. Under what law is that, the State law?

Mr. McCUMBER. Of course it would be the State law.

Mr. SUTHERLAND. Then, Mr. President——

Mr. McCUMBER. One would hardly expect that the State authorities would proceed under a national law.

Mr. SUTHERLAND. But I understand the regulation of interstate commerce consists in prescribing a rule which governs commerce. In the case the Senator supposes would not recourse be had to the law of the State, and would not then the law of the State be the rule which regulated commerce?

Mr. McCUMBER. Oh, no.

Mr. SUTHERLAND. And not a law of the United States.

Mr. McCUMBER. It would not be a rule which regulated commerce, because before or at the time that that shipment was made, if it be established that it is made for an unlawful purpose, it is not in interstate commerce, and is so declared by this very law, and therefore is not subject to the protection that it would receive ordinarily as an article of interstate commerce.

The point I tried to make clear in all this argument and as briefly as possible was that Congress has the authority to say when an article shall cease to be a subject of interstate commerce and when it would loosen its own control over that article. When the facts established that the commodity came within that prohibition whereby Congress had relieved it from its authority, it would then of itself fall under the laws of the State.

Mr. SUTHERLAND. But the effect of the law which the Senator proposes is to allow the State jurisdiction to attach an interstate shipment of liquor whenever it passes the State line, dependent upon the intention of the consignee. If the consignee intends to violate a State law, then immediately, according to the law which the Senator is favoring, the power is given to the State to seize the goods.

Mr. McCUMBER. No.

Mr. SUTHERLAND. And that seizure of his goods——

Mr. McCUMBER. No; Mr. President, therein the Senator is mistaken. No power is given the State. Immediately it ceases to be an article of interstate commerce the State authorities can operate upon it. There is the distinction. Nothing is given to the State by Congress. The State authority exists independent of Congress and attaches the moment the Federal power over the shipment is terminated, and it is terminated upon a breach of the condition under which the shipment is authorized.

Mr. SUTHERLAND. Well, Mr. President, I will not pursue that further at this moment, but I wish to ask the Senator another question.

This bill applies to foreign commerce as well as interstate commerce. We have laws which permit the importation of liquors into the United States upon paying certain duties. Suppose there is imported from France a shipment of wine. The importer has paid the duty, but it is the intention of somebody connected with it, not necessarily the importer, because the bill does not so provide——

Mr. McCUMBER. No.

Mr. SUTHERLAND. It is the intention of somebody directly or indirectly connected with the transaction to violate a law of the State. Would the Senator say, in such a case as that, it would be within the power of Congress to permit that to be done?

Mr. McCUMBER. Yes; Mr. President, I say it would be within the power of Congress, undoubtedly. I can hardly conceive of such a case arising, but should a case of that kind arise I do not doubt for one moment the power of Congress to say that it has lost its protected condition as a commodity of interstate commerce.

Mr. SUTHERLAND. Is not assuming the power of Congress likely to result in a great deal of confusion?

Mr. McCUMBER. No; I think not, because I think most of the shipments that are made from a foreign country to this country are not shipped into a particular State for a particular sale. They are shipped to be sold in this country at any point where there may be a demand for them. They are seldom ever shipped directly into some prohibition State from a foreign country. If they were, it would, of course, fall under the same rule as an interstate shipment.

Mr. SUTHERLAND. Let me ask the Senator another question, because I want to get his view of the construction of the bill. The bill provides that this shipment or transportation shall be prohibited where the liquor "is intended by any person interested therein, directly or indirectly, or in any manner connected with the transaction, to be received"——

Mr. TOWNSEND. Mr. President, that is very interesting, no doubt, and we would like to hear it in this part of the Chamber.

The PRESIDENT pro tempore. The Senator from Michigan complains that the Senator can not be heard.

Mr. SUTHERLAND. The bill provides that the transportation of intoxicating liquors shall be prohibited wherever it is "intended by any person interested therein, directly or indirectly, or in any manner connected with the transaction, to be received, possessed, or kept, or in any manner used," and so forth, contrary to the law of the State. What is the Senator's idea as to the scope of that provision? Does it extend beyond the consignee; and if so, to what person or persons, bearing what relation to the transaction?

Mr. McCUMBER. They must bear a relation to the shipment, because that is stated in the provision itself.

Mr. SUTHERLAND. I know.

Mr. McCUMBER. There must be an interest or relation in the shipment itself, and then if any person has any relation to that shipment or has an interest in it, of course he is affected by it. That, of course, does not mean the common carrier, but either the consignor or the consignee.

Mr. SUTHERLAND. I read the language, of course, but I wanted to know if the Senator would not give me an illustration where it would extend beyond the consignee.

During the delivery of Mr. McCUMBER's speech,

The PRESIDENT pro tempore. The Senator from North Dakota will kindly suspend. The hour of 1 o'clock having arrived, it is the duty of the Chair to lay before the Senate the unfinished business, which will be stated.

The SECRETARY. A joint resolution (S. J. Res. 78) proposing an amendment to the Constitution of the United States.

Mr. LODGE. I ask that the unfinished business be temporarily laid aside.

The PRESIDENT pro tempore. The Senator from Massachusetts asks unanimous consent that the unfinished business be temporarily laid aside. Is there objection? The Chair hears none. The Senator from South Dakota will proceed.

After the conclusion of Mr. McCUMBER's speech,

Mr. KENYON. Mr. President, I wish to answer the suggestion of the Senator from Utah. The words "or in any manner connected with the transaction," in my judgment, should be omitted from the bill, and I had proposed to move to strike them out at the proper time, leaving the intention to the person interested therein directly or indirectly, the consignor or consignee, having a direct interest in the matter. I do not think that a railroad brakeman or the man who moves the liquor from the depot to the place of destination would be such a person as intention on his part should have anything to do with destroying the interstate commerce feature of the commodity.

Mr. McCUMBER. The Senator does not think that that possibly may be the construction anyway.

Mr. KENYON. I think not, but I think those words should be out.

Mr. SUTHERLAND. Suppose we strike out the words "or in any manner connected with the transaction," so that the bill will read "by any person interested therein, directly or indirectly." The consignor is evidently interested directly; the consignee is evidently interested directly. Who is interested indirectly?

Mr. KENYON. That is to cover a subterfuge, or some matter of that kind which might arise in a particular case. It would be governed by the particular circumstances that might arise in any particular case.

Mr. SUTHERLAND. A subterfuge would not prevent the consignor or consignee from being interested directly. That is a matter of proof.

Mr. KENYON. Of course the words are rather sweeping, but I think the intent and purpose was that there may be no subterfuge in the matter, but it should apply to one who has a real interest.

Mr. SUTHERLAND. It says an indirect interest.

Mr. KENYON. I understand it is to provide against any question of subterfuge.

Mr. SUTHERLAND. We ought not, as it seems to me, in a statute of this character put in provisions that none of us understand the meaning and the application of. I should like to hear from some of the proponents of the bill as to just what is meant by an indirect interest in one of these shipments. If it means nothing, then it ought to go out.

Mr. WILLIAMS. If the Senator from Utah will pardon me, I think I can give him an illustration. Suppose a man by the name of John Jones is carrying on a blind-tiger business in a prohibition State, and knowing that the State authorities are pretty well cognizant of his affairs he gets John Smith to order liquor and act as consignee. In that case John Jones is indirectly the criminal, and if it would affect nobody but the direct consignee of course the real criminal in the case would escape all punishment and the stool pigeon would be the only one punished.

Mr. SUTHERLAND. In the case the Senator supposes it seems to me that a person would be directly interested in it and not indirectly; he would have a direct interest.

Mr. WILLIAMS. He would be indirectly interested in the shipment and directly interested in the unlawful business.

Mr. SUTHERLAND. The bill says any person interested therein directly or indirectly; that is, in the shipment or transportation of liquor, and so on.

Mr. KENYON obtained the floor.

Mr. MARTINE of New Jersey. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Iowa yield to the Senator from New Jersey?

Mr. MARTINE of New Jersey. Will the Senator yield to me?

Mr. KENYON. How long will the Senator take?

Mr. MARTINE of New Jersey. Five minutes or thereabouts.

Mr. KENYON. I had intended to consider this bill at some length. Since the hour is now approaching for the impeachment proceedings, five minutes are about all I will have in any event to-day. I am willing to give the Senator two of those five minutes.

Mr. MARTINE of New Jersey. With the Senator's permission, I should like to say a few words.

Mr. KENYON. Mr. President, I can not yield.

The PRESIDENT pro tempore. The Senator from Iowa declines to yield.

Mr. KENYON. I would yield for a question but not for remarks.

Mr. MARTINE of New Jersey. I have no questions, but I have only a few remarks that I desire to submit.

Mr. KENYON. I decline to yield.

Mr. MARTINE of New Jersey. The Senator declines?

Mr. KENYON. I am sorry, but I decline to yield.

Mr. MARTINE of New Jersey. Very well.

The PRESIDENT pro tempore. The Senator from Iowa will proceed.

Mr. KENYON. Mr. President, I realize I can not get far in the discussion of this measure this morning, on account of the approaching hour for the impeachment trial. I think this is a much misunderstood bill among the general public, judging from the letters and documents and printed matter that we are all probably receiving. It is charged in some that the bill is to prevent personal use of liquor and prevent use in families of intoxicating liquors, and the last carefully prepared document I received was that it was in disguise a bill to dissolve the Federal Union. Of course, if these things are true it is a very bad bill, and it ought not to receive any support. However, none of these things are true.

Now, I think no lawyer who is honest with himself and perfectly frank will deny that there are very close constitutional questions involved in this bill, and especially as to section 2. Every forward measure must run the gauntlet of constitutional objection.

The evil which this bill seeks to strike at is apparent, and the purpose, it seems to me, is commendable. In its ultimate analysis the bill is simply to permit the States to exercise their reserved police power without interference by the Federal Government; in other words, to subject interstate commerce in certain articles to the laws of the several States. This Government is one of delegated powers. It has been asserted by constitutional writers of great eminence that one of the incentive reasons for the adoption of the Constitution was to give free channels to commerce and not permit the States by various regulations to block commerce.

The power of the State in its reserved police power is one which Congress does not give and is one which Congress can not take away. It can not add one particle to or detract one iota from the police power of the States. These powers belong to the States; the right to make such laws concerning the health, life, and safety of its citizens as its legislative power in its wisdom may determine. This is just as much a right in the State as the constitutional right to regulate commerce is in Congress. The "police power zone" of the State, if such an expression might be used, may at times lap over and intrude upon the "interstate commerce zone" of the Federal Government. If such conflict ever does arise, the Federal Government, of course, is supreme.

This bill if enacted would not be a law to bring about prohibition. It would not be a law to stop personal use of intoxicating liquors, nor to prohibit the shipment of intoxicating liquors for personal use, nor to stop the use of intoxicating liquors for sacramental purposes. Its purpose, and its only purpose, is to remove the impediment existing as to the States in the exercise of their police powers regarding the traffic or control of intoxicating liquors within their borders.

It is the spirit of our times and the genius of our institutions that each State should exercise its police power free from the impediments that might spring from a narrow construction of the interstate-commerce clause. Where a State has determined that intoxicating liquors shall not be manufactured or sold within its borders, is it not manifest that the citizens of other States should not be granted greater privileges in that State than its own citizenship enjoy?

Mr. President, I realize that the hour of half past 1 has approached, at which time the impeachment trial is to proceed, and I give notice that I shall conclude my remarks at a morning session hereafter.

OMNIBUS CLAIMS BILL.

Mr. CRAWFORD. I wish to give a notice. It is that at the close of the morning business to-morrow I will ask the Senate to resume the consideration of the omnibus claims bill.

Mr. LODGE. Mr. President, I make the point of no quorum.

The PRESIDENT pro tempore. The Senator from Massachusetts makes the point that there is no quorum present. The roll will be called.

The Secretary called the roll, and the following Senators answered to their names:

Ashurst	Cullom	Martine, N. J.	Smith, Ariz.
Bacon	Curtis	Massey	Smith, Ga.
Bailey	Dixon	Myers	Smith, Md.
Bankhead	Fletcher	Nelson	Smith, Mich.
Borah	Foster	Newlands	Smith, S. C.
Bourne	Gallinger	O'Gorman	Smoot
Brandegee	Gore	Oliver	Stephenson
Bristow	Gronna	Overman	Sutherland
Brown	Hitchcock	Page	Swanson
Bryan	Johnson, Me.	Paynter	Thornton
Burnham	Johnston, Ala.	Perkins	Tillman
Burton	Jones	Perky	Townsend
Chamberlain	Kenyon	Pomerene	Wetmore
Chilton	La Follette	Reed	Williams
Clapp	Lea	Richardson	Works.
Clark, Wyo.	Lodge	Root	
Crane	McCumber	Sanders	
Crawford	Martin, Va.	Simmons	

Mr. SMITH Arizona. I wish to announce the absence of the Senator from New Mexico [Mr. FALL], and to state that he is detained from the Senate on account of sickness.

The PRESIDENT pro tempore. Sixty-nine Senators have answered to their names. A quorum of the Senate is present.

Under the terms of the resolution adopted by the Senate, the senior Senator from Georgia [Mr. BACON] will kindly take the chair.

Mr. BACON took the chair as Presiding Officer.

IMPEACHMENT OF ROBERT W. ARCHBALD.

The PRESIDING OFFICER (Mr. BACON) having announced that the time had arrived for the consideration of the articles of impeachment against Robert W. Archbald, the respondent appeared with his counsel, Mr. Worthington, Mr. Simpson, and Mr. Robert W. Archbald, jr.

The managers on the part of the House of Representatives appeared in the seats provided for them.

The Sergeant at Arms made the usual proclamation.

The Secretary read the Journal of Saturday's proceedings of the Senate sitting as a Court of Impeachment.

Mr. WORKS. Mr. President, some days ago an order was passed by the Senate requiring the managers on the part of the House and the counsel for the respondent to file with the Secretary their briefs or citations of authorities for the immediate use of Senators. I should like to inquire whether that order has been complied with.

The PRESIDING OFFICER. The Chair will make the inquiry of the managers and of counsel for the respondent.

Mr. WORKS. Well, Mr. President, if you will allow me, first, I desire to say that on the part of the managers a printed copy of the citations of authorities up to a certain point has been furnished to me personally, but with the statement that the managers desired to add further authorities.

Mr. WORTHINGTON. Mr. President, I must confess that if such an order was made it escaped my observation. I know that there was a colloquy here about it, but we have been so busily engaged in——

The PRESIDING OFFICER. The Chair will interrupt counsel to the extent of saying that as the Chair was about to submit the question as to the correctness of the Journal the Senator from California [Mr. WORKS] addressed the Chair, and the Chair supposed he was going to direct his remarks to that question. If counsel will permit the Chair, he will now ask whether there are any inaccuracies in the Journal? If not, it is approved.

Counsel will proceed.

Mr. WORTHINGTON. I was about to say that some of us, as the Presiding Officer and the Senate know, have been so much occupied with preparing the facts in the case that we have had very little time to devote to the preparation of the law. We have, of course, dealt with it before this trial began, and it will take us a very short time when we conclude the questions in relation to the facts to prepare a brief, to submit it, and to have it printed.

The PRESIDING OFFICER. The counsel will do so at their earliest convenience.

Mr. WORTHINGTON. And as the Senate, as I understand, has determined to adjourn upon the 19th of this month to the 2d of next month we can certainly arrange so that our brief can be in the hands of all Senators very soon after the adjournment.

Mr. WORKS. Mr. President, of course I do not desire to ask anything unreasonable of the managers or of counsel, but, so far as I am individually concerned, I should be glad to have an opportunity to examine with some deliberation the authorities that are to be relied upon, and I suppose other Senators have the same feeling about it. I assumed that both the managers and the counsel for the respondent had such authorities as they expected to rely upon and that they could conveniently furnish them at any time.

Mr. Manager CLAYTON. Mr. President, I have before me a brief prepared some time ago on behalf of the managers, and I have undertaken to furnish copies of it to the Senators who have indicated to me a desire to see that brief. I had withheld the printing of that brief in the RECORD for the purpose, as the Senator from California has well said, of making some additions to it, and the Chair is quite well aware of the conditions under which we have worked since the trial of this case has actually begun. If it is the desire of the Senate, I am quite willing that the brief, to which we desire to add something later along, may go into the RECORD at this time.

The PRESIDING OFFICER. It is not so desired.

Mr. Manager CLAYTON. Then I will withhold it; but I may say that, in my opinion and in the opinion of my associates, not later than two days after the Christmas recess begins we shall have this brief prepared and printed and get it into the hands of the Senators. I hope that the respondent's counsel will do the same thing, to wit, have their brief in the hands of the Senators at that time also.

Mr. WORTHINGTON. I can say, Mr. President, we can certainly have that done this week. May I ask now, as the Senate will not then be in session, is it proposed that these briefs shall be printed separately or be handed to the Secretary to be incorporated in the record? I would suggest that it would be a very good thing if the Senate could make the order, if it is necessary to make an order, that these briefs shall be printed separately, so that they may be distributed to the Senators without reference to the vast bulk of the record as to the evidence.

Mr. WORKS. The order was passed some days ago, and as counsel is not familiar with it I suggest that the order may be read for his information.

The PRESIDING OFFICER. The Secretary will read the order which was passed on that subject.

Mr. Manager CLAYTON. Mr. President, if I may be permitted to say so, I think the counsel for the respondent understands the order, and I think he agrees with me that at the latter end of this week we shall both furnish these briefs, so that they will be printed under the previous order made by the Senate. Am I correct?

Mr. WORTHINGTON. So far as what the manager states as to what we propose to do, he is correct. So far as the order about printing these briefs separately is concerned, I have no recollection about it.

The PRESIDING OFFICER. The Chair will state that, unless there is objection, the order will be that the briefs be printed separately.

Mr. Manager CLAYTON. They will both be incorporated into the proceedings and the record of this proceeding.

Mr. WORKS. It will be necessary in that case, Mr. President, to vacate the order already made.

The PRESIDING OFFICER. The Chair submitted it for the unanimous consent of the Senate only. The Chair had no right to order it otherwise, and, with the permission of the Senator from California, as the Secretary can not now immediately find the order, the proceedings will be continued, and the order will be presented a little later.

Mr. WORKS. I shall not insist upon that, and I am perfectly willing that the order shall be so changed as to require the briefs to be printed separately. I have not objected. I was only suggesting the fact that an order was in existence to the contrary.

The PRESIDING OFFICER. The present order to print the briefs separately will not conflict with the prior order, as the Chair understands. The prior order wil be carried out, and the present order, passed unanimously by the Senate itself, without objection, will be for a separate printing for the convenience of managers, counsel, and Senators.

The Chair understands that the managers have concluded their evidence, and counsel for the respondent will now present evidence on behalf of the respondent.

Mr. SIMPSON. We desire to call a witness a little out of order because of important engagements which he has. I will ask that Mr. E. E. Loomis be called.

TESTIMONY OF E. E. LOOMIS—RECALLED.

Mr. E. E. Loomis, having been previously sworn, was examined and testified as follows:

Q. (By Mr. SIMPSON.) Mr. Loomis, on Friday last Mr. C. G. Boland testified that he had been informed by Mr. George M. Watson that yourself, Mr. Phillips, and Judge Archbald were to receive a portion of an excess claim which he, Watson, had presented to your company over and above the amount which his clients had told him to claim. Will you please——

Mr. Manager FLOYD. Mr. President, we object——

Mr. SIMPSON. Excuse me, if you please, until I finish the question. The witness need not answer until directed to do so. [To the witness.] Will you please tell us whether or not there was any agreement or understanding, express or implied, of any kind or character that you were to get any portion of the money which was claimed from the Delaware, Lackawanna & Western Railroad?

Mr. OVERMAN. Mr. President, I will ask counsel to talk a little louder. He can not be heard here.

Mr. SIMPSON. That is the first time that it was ever said that my voice was so low that it could not be heard, and I shall endeavor to make it the last.

Mr. THORNTON. Mr. President, the reason counsel can not be heard is the noise in the rear part of the Chamber.

The PRESIDING OFFICER. The Chair will request Senators and others who desire to converse to retire to the lobby. It is impossible for the proceedings to be conveniently had with audible conversation progressing in the Chamber.

Q. (By Mr. SIMPSON.) Will you kindly state, Mr. Loomis, whether or not there was any agreement or understanding of any kind or character, express or implied, by which you were to get any part or portion of any sum of money which was recovered or paid to Mr. Watson on behalf of the Marian Coal Co. or Mr. Boland or anyone else?

Mr. Manager FLOYD. We object to the question, Mr. President.

The PRESIDING OFFICER. On what ground?

Mr. Manager FLOYD. Upon the ground that it is irrelevant and incompetent. We are not trying Mr. Loomis for anything in this matter, and it is immaterial and irrelevant whether Mr. Loomis was to get anything or not.

The PRESIDING OFFICER. If the Chair recalls the fact correctly, the evidence as to Mr. Loomis having any participation in this matter was brought out by counsel for the respondent.

Mr. SIMPSON. Only by asking the witness to state the whole of a conversation when he undertook to state a part of it on the suggestion of the managers.

The PRESIDING OFFICER. If the evidence had been brought out by the managers, the Chair would hold that the counsel would have a right to reply to it; but as the evidence to which it relates was brought out by the respondent and it is irrelevant, the Chair does not think that it is now competent.

Mr. SIMPSON. Will the Chair allow me a moment before finally ruling upon the question? I would concede, sir, without a doubt that if that which was brought out on behalf of the respondent was entirely separate and distinct from that which was brought out by the managers, that rule would be directly applicable; but when the managers asked for a fraction of the conversation and the other side simply asked for the whole of the conversation to be brought out, I submit, sir, that the managers being the ones who introduced the matter, the rule to which the Chair has adverted does not apply, and that we are entitled to have it known whether or not the statement which the witness undertook to make has a basis of truth or not as to everyone who was referred to in the conversation which the managers themselves, in the first instance, had brought out.

The PRESIDING OFFICER. Counsel undoubtedly would have a right to bring out the full conversation so far as the actual conversation relates to the case; but the Chair does not think that that part of the conversation was relevant to the case; it was brought out voluntarily by the counsel for the respondent. The remedy of the respondent, if the counsel will permit the suggestion, is to move to rule out the former testimony which was received on that subject as to Mr. Loomis which had nothing to do with the case whatever.

Mr. SIMPSON. It was a part of a full conversation, sir; but if the Chair has ruled on it, of course, I will not undertake to argue it further.

The PRESIDING OFFICER. The Chair is only the mouthpiece of the Senate; and, if the Chair has wrongly decided, the Senate is the authority to so determine.

Mr. WORTHINGTON. Mr. President, as it does not clearly appear, perhaps, to the minds of all here as to what was brought out, it was this: Mr. Boland was asked, and under the ruling made by the Senate he was allowed to be asked, about the use by Watson of Judge Archbald's name, and he said that Watson had said that he thought Judge Archbald ought to be compensated for what he was doing in helping to bring about that settlement. Then, on cross-examination, he was asked for the full conversation, and he said what was said was that this witness and Mr. Phillips and Judge Archbald were all to be paid. That was one statement.

Now, Mr. President, it seems to me that we ought to be allowed to contradict that statement at all points where we can touch it. Otherwise it would leave us in the attitude of denying that it was true as to Judge Archbald, but might leave everybody to think that it was true as to Mr. Loomis and true as to Mr. Phillips, and thereby give very much color to the proposition that it was also true as to Judge Archbald.

The conversation which related to Judge Archbald was all brought out by the managers, and we brought out that which related to Mr. Loomis and to Mr. Phillips, but it was all one word, one sentence, one breath.

The PRESIDING OFFICER. Counsel at that time had the right to object——

Mr. WORTHINGTON. The Senate, as we understood, ruled by a vote that was taken when the question was submitted to the Senate by the Chair that that conversation was competent.

The PRESIDING OFFICER. No; only as to Judge Archbald. The Chair has the question before him. The Chair will read the question which the Senate ruled was admissible. The Chair had previously ruled that it was inadmissible; and when again offered, while still of the same opinion, the Chair submitted the question to the Senate, and the Senate ruled that it was admissible. This is the question:

Q (By Mr. Manager FLOYD.) Now, Mr. Boland, I will ask you to state whether or not during the course of these negotiations you had any conversations with Mr. Watson relative to Judge Archbald's interest or participation in this settlement, and particularly as to whether he was to share in the fee or receive any money or other pecuniary consideration for his services in attempting to make that settlement?

That was all the Senate passed upon. The Chair did not feel authorized, as the counsel was bringing out the testimony on his own side, to interpose. The Chair thought at the time that it was altogether irrelevant and would have sustained the motion if it had been made at that time to exclude it from the testimony as to Mr. Loomis; and the Chair would entertain such a motion now, for that matter.

Mr. WORTHINGTON. I am unable to see how we can make a motion without moving to strike out what the Senate formerly voted to admit.

The PRESIDING OFFICER. The Chair would not entertain that, of course; but the Chair would entertain a motion to strike out everything that has been said about Mr. Loomis, because that is not within the limit of the question ruled in by the Senate.

Mr. WORTHINGTON. Well, I will have to consider, Mr. President, about that. We may bring the matter up at a later stage.

The PRESIDING OFFICER. But if this were admitted the managers would have a right to take issue upon it, introduce evidence in regard thereto, and where would the end be?

Mr. SIMPSON. We have no further questions to ask this witness, then.

The PRESIDING OFFICER. The witness may retire.

TESTIMONY OF JOHN M. ROBERTSON.

Mr. WORTHINGTON. I ask that Mr. John M. Robertson be called.

John M. Robertson, having been duly sworn, was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) State your full name, please, Mr. Robertson.—A. John M. Robertson, Scranton, Pa.

Q. How long have you lived about Scranton?—A. Since 1866.

Q. What is your business, and what has been your business?—A. Coal operator.

Q. Did you have anything to do with the production of the Katydid culm dump near Moosic?—A. Yes, sir.

Q. What?—A. Under an arrangement of lease with the Hillside Coal & Iron Co. I started the Katydid in 1885——

Mr. WORTHINGTON. I am afraid you can not be heard. Will you please speak louder?

The PRESIDING OFFICER (to the witness). It is absolutely necessary that every Senator should hear what you say.

The WITNESS. Under an arrangement of lease with the Hillside Coal & Iron Co. I started the Katydid in 1885. The breaker was built in 1886, and the beginning of this dump was made then.

Q. What is a breaker?—A. A structure for the purpose of breaking and preparing coal.

Q. Did you mine the coal?—A. Yes, sir.

Q. You took it out of the ground?—A. Took it out of the ground.

Q. Very well, go ahead.—A. This operation was worked under my own name until 1891, when Mr. Law came into partnership with me and we worked under the firm name of Robertson & Law until the close of the colliery. He, however, retired in 1904, and I continued the operation alone.

Q. Until what time did you continue after 1904?—A. Until 1908.

Q. What happened then?—A. The breaker was burned by a fire from a dump belonging to the Hillside Coal & Iron Co.

Q. Had you attempted before the breaker burned down to utilize the culm dump?—A. In 1905 I built a washery and commenced to prepare the dump and wash the dump.

Q. What is the distinction between a breaker and a washery?—A. The one is generally dry—the coal is prepared dry; and in the other case water is used in the preparation of smaller sizes.

Q. Well, you began in 1905, then, to wash this dump?—A. Yes.

Q. To get coal out of the dump?—A. Yes, sir.

Q. To segregate it from the waste?—A. Yes.

Q. Well, how long did you continue?—A. Until 1908.

Q. Did the fire burn down the washery, too?—A. Yes.

Q. Well, what did you do after that?—A. I did not do anything.

Q. Why?—A. Well, I could not see that there was use in running the dump alone. The coal was pretty near worked out, and it would scarcely pay to build another structure.

Q. What would it have cost to build a washery?—A. In the neighborhood of $20,000, the cheapest way you could do it, I think.

Q. Now, I wish you would tell the Senate what you know about the value—the Katydid dump stands now as it did when you left it, does it not?—A. Yes, sir. At present, of course, there is only half of the dump; we washed one-half between the years 1905 and 1908.

Q. Tell the Senate what you know about the quantities of different kinds of coal in that dump now, or since you stopped washing it in 1908, and about its value, if it has any.—A. The first half that was washed was naturally the best. It was laid down first and was the better part; the better sizes were in it; the larger sizes; so that what is remaining now is really very small, principally No. 3 buck and smaller.

Q. How many sizes are there of buck?—A. Four.

Q. What are the sizes of coal supposed to be in the dump, beginning at the largest size?—A. There could not be anything gotten larger than buck No. 1. We tried to make chestnut coal and also pea from the dump—from the washings of the dump—but we found it was so poor when it was incorporated with the fresh mined coal that we could not market it.

Q. Is it possible, then, in your judgment, to get any chestnut coal out of that dump as it stands now?—A. It is not.

Q. What would you say about getting $17,000 worth out of it?—A. I do not think you could get any.

Q. Not any?—A. Not profitably.

Q. Why could you not get it profitably?—A. It would be possible, perhaps, to get a little and sell it at retail, but it would not be marketable. It would not be fit for the market.

Q. Why do you say you could not get any of the size you call pea?—A. For the same reason.

Q. Do you know anything about a rock pile that forms a part of the dump?—A. Yes. There are two rock piles forming a part of it.

Q. Do you see the map back there?—A. Yes, sir.

Q. That is an enlargement of the map made by Mr. Rittenhouse and introduced in evidence. I wish you would go back to the map and with a pointer tell us what you are talking about. [The witness did as requested.]—A. There is a large rock dump and ash dump in the bottom of this pile [indicating on map].

Q. You say there is a large ash dump in the bottom of it?—A. Yes, sir.

Q. It is not culm at all, then?—A. No, sir.

Q. I mean the bottom.—A. Yes; the bottom.

Q. What is there besides ash at the bottom?—A. Rock and ashes. The ash was formed from the boilers, coming out from here [indicating], and we afterwards——

Q. Please talk so I can hear you.—A. The rock and ash pile were dumped in here, and we afterwards had to hoist or convey the slushings, and so we put in some refuse coal—small, fine coal—and made a large conical dump of this [indicating].

Q. Take that conical dump by itself. What is it worth to anybody who tries to get some coal out of it?—A. There is only a small quantity of No. 3 buck in it.

Q. Would it pay to get it out?—A. I do not think so.

Q. Very well. Go on with the rest of it.—A. Then we sunk a long slope coming in on it in this direction [indicating], and all the rock that was taken from that slope was dumped in here [indicating]. It would be absolutely impossible for any surveyor coming there and seeing that dump as it is to-day to make a correct estimate unless he knew the topography of that ground before the dump was laid down.

Q. Go ahead. What about the rest of it?—A. Then the rest out in this direction [indicating] contains nothing but No. 3 buck.

Q. Take that Katydid dump as a whole. I ask you again whether, in your judgment as the man who made it and a man who has been in this business, there is enough coal there to pay for getting it out?—A. Well, I do not consider that there was.

Q. What is the situation there as to water? You say it is a washery and you need water. How is it situated with reference to that necessity?—A. When the washery was commenced we had been able to secure a large quantity of water by means of a barrier pillar existing between the Delaware & Hudson and the Hillside Coal & Iron Co., with which we were working. I think in 1907 the Delaware & Hudson broke through that barrier pillar and took all our water away, so that it became very difficult to run the washery.

Q. I understand that you still hold that dump?—A. Yes, sir.

Q. Claim the ownership of it, at least, subject to a royalty to the Hillside Coal & Iron Co. of 37½ cents a ton?—A. Decidedly.

Q. Has there been anything in the last four years to keep you from working it and paying that royalty and getting the profit there was in it, if there was any?—A. No, sir; I think not.

Q. Do you know anything about an effort that was made to sell this dump to the Du Pont Powder Co.?—A. Yes, sir.

Q. When was that?—A. In 1908, after the breaker and washery were burned.

Q. What was there about that?—A. The Du Pont Powder Co. were erecting a large new powder mill close to the property we were mining on. Indeed, some of it is on that property, and Mr. Belin, who is one of the managers of the Du Pont Powder Co.——

Q. I am not able to hear, Mr. Robertson.—A. (Continuing.) Mr. Belin asked me if I was willing to sell the dump. They thought of using it for the——

Q. Well, I do not care about the details of that. What I want to get at is whether any offer was made by you and the Hillside Coal & Iron Co. to sell it to the Du Pont Powder Co.?—A. Yes, sir.

Q. What was the proposition?—A. The proposition was I offered it to them for $10,000, including the royalty, and they would then own the dump complete.

Q. That is, they would actually get your title and the Hillside Coal & Iron Co.'s title?—A. Yes, sir.

Q. How did you arrange that with the Hillside Coal & Iron Co.? What were they to get out of the $10,000?—A. I saw Mr. May, the general manager of the Hillside Coal & Iron Co., and I told him about the offer, and he sent his engineers down, and they measured the dump and found the quantity of coal they thought it contained. By means of screening they found out the quantity of the different sizes, and, based on these reports, they figured out that their value in the dump was about $2,000.

Q. Did the Hillside Coal & Iron Co. authorize you then to sell that dump for $10,000—to keep $8,000 yourself and give them $2,000?—A. Mr. May said he would recommend that.

Q. Mr. May said he would recommend that? That is what he said here.

Mr. Manager STERLING. I object to the statement of the counsel for two reasons.

Mr. WORTHINGTON. I will withdraw it, then.

Mr. Manager STERLING. First, it is improper, if true, and, in the second place, he never said anything of the kind.

Mr. WORTHINGTON. I do not want to get into an argument with counsel, but there is a letter here of March 31, in which he says that he would recommend the sale of the interest of his company for $4,500.

Mr. Manager STERLING. I never saw the letter. He said on the witness stand that he did not recommend it. I have never seen any such letter. There is here, Mr. President, a letter in which he says he would recommend the sale for $4,500.

Mr. WORTHINGTON. I say that is what he said here about the sale to Judge Archbald and Mr. Williams.

Mr. Manager STERLING. He is now talking about the Du Pont sale.

Mr. WORTHINGTON. Counsel misunderstood what I meant, probably. I was only saying that Mr. May in this case had recommended the sale of the interest of the Hillside Coal & Iron Co. for $4,500.

Mr. Manager STERLING. That is not what counsel said at all. He said the witness said what Mr. May said.

Mr. WORTHINGTON. Well, let us go on with the evidence, and I will withdraw my remark.

Q. (By Mr. WORTHINGTON.) Why was not that sale made, then?—A. The Dupont Powder Co. was also trying to find out for how much they could buy their electricity direct from the Scranton Electric Co., and they found that was the cheaper way to get it, and they are getting it from them now.

Q. They determined to get their coal some other way. Did you at any time in 1911 give an option to anybody on this dump or your interest in it?—A. In nineteen hundred and——

Q. In 1911, to Mr. Williams?—A. Yes; I gave Mr. Williams an option.

Q. Tell us how that came about.—A. In April or May, I think it was, certainly in the early part of 1911, Mr. Williams came to my office and he asked if the dump was still for sale. I told him it was. He wanted to know if I would give him an option on it, and I said no; and he said then that he had some parties in with him.

Q. Keep your voice up; I can not hear you.—A. He said there were some parties with him that he thought I would lease to. I said, "Well, you had better tell me who they are, because I certainly can not deal with them unless I know who they are." He told me Judge Archbald wanted to get it. He told me they had some parties they thought they could sell it to.

Q. Did you agree to give him any option or privilege about it?—A. I did.

Q. What was it?—A. I gave him an option, I think, in September.

Q. What did you tell him when he came there in the spring?—A. I told him that I had a good deal of difficulty at first in finding out who was with him. I asked him if Mr. Bone was connected with it, and he said no. Then he told me Judge Archbald was.

Q. Did you then make any proposition or say what you would do? I know you did not give him any written option until later, but did you in the spring tell him what you would do?—A. I think I offered him the dump first for $5,000, and then he came to me a little later and said the deal would be consummated in about two weeks. I said, "Well, if you can pull it through in two weeks, I will give you a reduction; I will make it $3,500."

Q. Did you consider $3,500 was a fair sum for your interest in the dump at that time?—A. I considered it was reasonable; I was willing to take it.

Q. You later gave him a written option, which is in evidence here?—A. Yes, sir.

Q. That was in September?—A. Yes, sir.

Q. You gave him a paper which is in the handwriting of and witnessed by Judge Archbald?—A. Yes; I did.

Q. Did you ask him any compensation for giving him that option?—A. No, sir.

Q. Why did you give him authority of that kind without getting any compensation for it?—A. Well, by this time I understood whom they were trying to sell it to, and I was willing to help the think along in any way.

Q. To whom did you understand they were trying to sell it?—A. The Erie & Wyoming Valley Railroad. I think that is the name.

Q. The Lackawanna & Wyoming Valley, is it not?—A. Yes; the Lackawanna & Wyoming Valley.

Q. What is called the Laurel line for short?—A. Yes.

Q. A little line between Wilkes-Barre and Scranton?—A. Yes, sir.

Q. I believe you have been here throughout this trial?—A. Yes.

Q. Under subpœna by the managers?—A. Yes.

Q. Have you stated to them what you know?—A. Not on this occasion, I have not; no, sir.

Q. Oh, you did that before the Judiciary Committee?—A. Yes.

Q. You were examined there by the managers?—A. Yes, sir.

Mr. Manager STERLING. I do not think the last few questions are material at all. We did not use him because we did not think anything he knew was material to the case. We ask, for that reason, to have the last few questions stricken from the record.

Mr. WORTHINGTON. I will not take up any time on that with the managers. If the managers insist upon that motion I will withdraw the question.

The PRESIDING OFFICER. The Chair understands counsel to withdraw the question.

Mr. WORTHINGTON. I understood Mr. Manager STERLING to say he did not consider it material. I supposed if it was material for Mr. Rittenhouse to give his opinion as to the value of the dump, it was material to get the opinion of the man who made it as to its value.

Mr. Manager STERLING. I was objecting to the last few questions. My objection did not go to the other matter at all.

Mr. WORTHINGTON. I make no objection to the motion to strike out the question to the witness about being subpœnaed by the managers on the part of the House.

The PRESIDING OFFICER. It will be so ordered.

Q. (By Mr. WORTHINGTON.) Did you at any time receive any notice from anybody about what is called the Everhart claim upon this dump?—A. Yes, sir; I did.

Q. Have you got this notice?—A. Yes, sir; I have.

Q. When did you receive it?—A. I think——

Q. (Interposing.) Well, you have them, have you? They will show for themselves.—A. Yes, sir; I have them.

Q. Where are they—in your pocket?—A. Yes, sir.

(The witness produced certain papers.)

Mr. Manager STERLING (after examining the papers). We have no objection to them.

Mr. WORTHINGTON. I ask that these be marked and that the Secretary read them. There are others that come later.

The Secretary read as follows:

[U. S. S. Exhibit O.]

(Walter S. Bevan, attorney and counselor, Scranton, Pa.)

APRIL 11, 1912.

Messrs. ROBERTSON & LAW,
Moosic, Pa.

GENTLEMEN: Having learned that you are about to sell and dispose of the interests you represent in lot No. 46, certified Pittston Township, you are hereby notified that Mr. Charles P. Holden, who owns certain interests in said lot, opposes said sale and hereby protests against the same, and he further notifies you that the sale will in no wise change or affect his interests in said lot and that the said sale will be made without his approval or consent.

You will therefore govern yourselves accordingly.

Very truly, yours,

WALTER S. BEVAN,
Attorney for Charles P. Holden.

Mr. WORTHINGTON. In connection with the letter, I should like to have in evidence the envelope, in order to show that it was mailed on the day it bears date.

The Secretary read as follows:

[U. S. S. Exhibit O—part 2.]

(Walter S. Bevan, attorney and counselor, Scranton, Pa.)

Messrs. Robertson & Law,
Moosic, Pa.

Stamped on the front: "Scranton, Pa., Apr. 11, 5 p. m., 1912."
Stamped on the back: "Moosic, Pa., Apr. 12, 8 a. m., 1912, rec'd."

The PRESIDING OFFICER. The Secretary will read the next exhibit.

The Secretary read as follows:

[U. S. S. Exhibit P.]

(The Everhart Brass Works, established 1857. Mine and mill supplies a specialty. Scranton, Pa.)

APRIL 11, 1912.

ROBERTSON & LAW,
Moosic, Pa.

GENTLEMEN: In reference to the five twenty-fourths interest in the coal in lot 46 and the culm derived therefrom, I, as administrator for the James Everhart estate, beg to notify you that we claim ownership of the above amount and not to dispose of the same without our consent.

Yours, very truly, JAS. E. HECKEL, *Administrator.*

Mr. WORTHINGTON. This [indicating] is the envelope in which that letter was supposed to be inclosed.

The Secretary read as follows:

[U. S. S. Exhibit P—part 2.]

(The Everhart Brass Works, established 1857. Mine and mill supplies a specialty. Scranton, Pa.)

Messrs. Robertson & Law,
Moosic, Pa.

Stamped on front: "Scranton, Pa., Apr. 11, 7.30 p. m., 1912."
Stamped on the back: "Moosic, Pa., Apr. 12, 8 a. m., 1912. Rec'd."

The PRESIDING OFFICER. The next exhibit will be read.

The Secretary read as follows:

[U. S. S. Exhibit Q.]

(Gaston, Snow & Saltonstall, Shawmut Bank Building, Boston.)

APRIL 13, 1912.

Messrs. ROBERTSON & LAW,
Connell Building, Scranton, Pa.

GENTLEMEN: Please take notice that Nina D. E. Jones and R. M. Saltonstall, the undersigned, as guardians of the minor children of John F. Everhart, deceased, claim an interest in the culm pile on lot 46, Pittston Township, Luzerne County, Pa.

This notice is given to you at this time as we understand that you are contemplating attempting to make a sale of the culm pile and in order to protect our rights in the premises. We should be glad to hear from you in reply to this letter at your early convenience.

Very truly, yours,

R. M. SALTONSTALL,
Per O.

Mr. WORTHINGTON. I offer the envelope which inclosed the letter.

The Secretary read as follows:

[U. S. S. Exhibit Q—part 2.]

(After five days return to Gaston, Snow & Saltonstall, Shawmut Bank Building, Boston, Mass.)

Messrs. Robertson & Law,
Connell Building, Scranton, Lackawanna County, Pa.

Registered No. 11527.
9038.

Stamped on the front: "Boston, Mass."
Stamped on the back: "Boston, Mass., Apr. 13, 1912. Registered."
"Scranton, Pa., Apr. 15, 1912. Registered."

The PRESIDING OFFICER. The next exhibit will be read.

The Secretary read as follows:

[U. S. S. Exhibit R.]

(Night letter.)

NEW YORK, N. Y., *April 11, 1912.*

ROBERTSON & LAW,
Connell Building, Scranton, Pa.:

Please take notice that I claim an interest in the culm dumps situated on lot 46, certified Pittston, Luzerne County, Pa., by virtue of an option given me by E. & G. Burke Land Co.; also on behalf of my wife, Mary E. Holden.

CHAS. P. HOLDEN,
625 Commonwealth Avenue, Boston, Mass.

11.19 p. m.

Q. (By Mr. WORTHINGTON.) After your washery burned down, in 1908, what, if anything, did you do in the way of exercising ownership over that bank?—A. Well, I still have a scale there.

Q. Did you take anything away from it from time to time?—A. Yes; I sold some small bunches of coal from wagons.

Q. In reference to Judge Archbald's connection with this matter, I want to know if at any time anybody suggested to you that the fact that he was interested was to be kept quiet or covered up in any way?—A. No, sir.

Q. And did you, as a mater of fact, undertake to keep it from anybody?—A. No; I made no secret of it.

Q. It appears that the option which you gave to Mr. Williams, and which is in Judge Archbald's handwriting and witnessed by him, was recorded. Did you have anything to do with the recording of it?—A. No.

Q. You did not?—A. I did not know it was recorded until I saw it here at the previous inquiry.

Mr. WORTHINGTON. That is all, Mr. President.

The PRESIDING OFFICER. The witness is with the managers.

Mr. Manager STERLING. Mr. President, I desire to move that all the testimony of this witness be stricken from the record. The reason for the motion is this: There is no charge in this count that the dump was sold to Judge Archbald and to Mr. Williams at less than it was worth or for more than it was worth, and under the charge in this count it is wholly immaterial as to what the value of the dump was.

It is not sufficient for counsel to say that we offered testimony of an engineer to show the amount of coal there. If it was not material to the issue, they could have objected to it then, and it would have gone out of the record. The fact that we offered immaterial testimony does not justify them in offering immaterial testimony in answer to immaterial testimony. The charge in the count is that Judge Archbald used his official influence to induce the railroad companies to sell this property to them—to Mr. Williams and Judge Archbald—and it is wholly immaterial whether he induced them to sell it for less or for more than it was worth. The offense exists in either event, and we say this testimony is wholly immaterial. We ask a ruling of the Chair on the question.

Mr. WORTHINGTON. Mr. President——

The PRESIDING OFFICER. The Chair does not desire to hear from counsel on this motion.

As the Chair recollects, there has been a great deal of evidence on the subject of the culm bank. The Chair denies the motion.

Mr. WORTHINGTON. Notwithstanding the rule that one should never argue with a court that has decided in his favor——

The PRESIDING OFFICER. It is dangerous.

Mr. WORTHINGTON. I wish not to make an argument, but to state what happened here.

I objected to Mr. Rittenhouse's testimony on the very ground that counsel argues in favor of the motion to strike this out, and counsel resisted my objection to keep out the evidence. The President sustained their contention, to the effect that it was claimed by the managers that the railroad company had agreed to sell this dump to Judge Archbald for less than it was worth, and that as that was evidence in this direction it should be admitted. Now, when they come to see where they are going to land on the proposition, they think there ought not to be any evidence on the subject in the record.

Mr. Manager STERLING. We are not concerned about where we will land. Counsel admits it is immaterial.

Whether counsel made the objection at the time, I do not remember. But it certainly ought to go out if both sides admit it is immaterial.

Mr. WORTHINGTON. It is a late day, Mr. President, after the Senators have heard the testimony about the great value of the dump, now to move to strike it out, when it can not be gotten out of their minds. I submitted it too late for the managers to change front——

Mr. Manager CLAYTON. It is no change of front on the part of the managers.

Mr. WORTHINGTON. When it appears that, instead of offering to sell it to Judge Archbald for less than it was worth, they were giving him a gold brick.

The PRESIDING OFFICER. The Chair has overruled the motion to strike out. The Chair thinks it is admissible on both sides—that offered by the managers and that offered by the respondent.

Cross-examination:

Q. (By Mr. Manager STERLING.) Mr. Robertson, you did have negotiations with the Du Pont Powder Co. for the sale of this culm bank?—A. Yes.

Q. That was in 1908?—A. Yes.

Q. And you priced it at $10,000?—A. Yes, sir.

Q. If that sale had gone through, you were to get $8,000 and the Hillside Coal & Iron Co. $2,000?—A. That is correct.

Q. Have coal dumps increased in value in the last two or three years?—A. I think they have a little.

Q. And the coal dump was probably worth more in 1911, when you had your negotiations with Williams, than it was in 1908?—A. Probably a little; they are in greater demand to-day than they were then.

Q. And notwithstanding that you were to get $8,000 for your share of the coal dump in 1908, three years later, after the value had advanced, you agreed to take $3,500 for your share, did you not?—A. That is true.

Q. You testified before the Judiciary Committee, did you not, that the coal dump was worth more than $10,000 in 1908, when you were about to sell it to the Du Pont people?

Mr. WORTHINGTON. I submit that if the witness is asked what he said there it ought to be shown to him.

Mr. Manager STERLING. I do not have to show it to him. I can ask him and then show it to him.

The WITNESS. That would depend upon who was buying it.

Q. (By Mr. Manager STERLING.) On the market. I am not asking what it was worth. Did you not say before the Judiciary Committee that it was worth more than $10,000 in 1908? Did you say that or not?—A. I think I did, Mr. STERLING.

Q. That was true, too, was it not?—A. Yes. It is also true——

Q. What is that?—A. There have been larger sums than that paid for dumps.

Q. I am not asking you that. But what you said before the Judiciary Committee was true?—A. I think so.

Q. And it was worth more than $10,000 then, and it had increased in value in 1911, had it not?—A. Yes, sir.

Q. You say you submitted to Mr. May, superintendent of the Hillside Co., a proposition that he sell his interest for $2,000?—A. He made that offer to me.

Q. Just answer my question. Did you not say on your direct examination that you suggested to Mr. May he could sell it for that price, if he would take $2,000 for his share? Did you say that?—A. That I could sell it?

Q. Yes.—A. Yes, sir.

Q. And you said that Mr. May said he would recommend the proposition?—A. He did.

Q. Do you know whether he ever did recommend it or not?—A. No; it fell through.

Q. That does not answer my question. Do you know that he recommended it?—A. I do not know that he did.

Q. Did you ever inquire if he did?—No; I never did.

Q. How long after that was it until it fell through?—A. I think about a month, or two months, perhaps, certainly not more than three.

Q. When Mr. May said he would recommend it he did not say whether he would approve it, did he?—A. No; he only said he would recommend it.

Q. Did he say he would recommend it or submit it?—A. Recommend it, I think.

Q. If Mr. May testified that he did not recommend it and did not approve it, do you not think that you could be mistaken?

Mr. WORTHINGTON. I object to trying to get one witness to testify upon what some other witness said about it.

Mr. Manager STERLING. I will withdraw the question. Perhaps it is not within the rule. [To the witness:] When Williams came to you, in 1911, to buy this dump, you would not price it to him until you found out who was interested in it?—A. No, sir.

Q. You did ask him who was interested in it?—A. I did.

Q. Whom did he tell you was interested?—A. At first he refused to tell me, and afterwards told me Judge Archbald.

Q. What did he say when you first asked him?—A. He said if I knew the party he thought I would be willing to sell to them.

Q. I do not understand your answer.—A. He said if I knew the party with whom he was connected he thought I would be willing to sell to him.

Q. Is that all he said then?—A. A great deal was said. I do not remember it all.

Q. Did he refuse to give the names of his partners?—A. He did at first.

Q. What reason did he give for not giving the names?—A. I think he wanted the option for himself first.

Q. Just for himself?—A. Yes.

Q. Would you have sold it to him?—A. No, sir.

Q. Why?—A. I did not think he was responsible.

Q. Now, what difference did it make, Mr. Robertson, whether Williams was responsible or not if you understood that you

were not to get any money out of it until he had sold it to somebody else?—A. I did not care to deal with Mr. Williams.

Q. Did he tell you that Boland was interested?—A. No, sir.

Q. Did he tell you that Archbald was interested?—A. He did.

Q. Later?—A. Finally.

Q. How long after the first conversation was it until he told you that Archbald was interested?—A. This was all in the first conversation.

Q. It was all in the first conversation?—A. Yes, sir.

Q. He finally told you that Judge Archbald was interested?—A. Yes, sir.

Q. Then you were willing to sell it?—A. Yes.

Q. What reason did you have for refusing to sell it to some persons and being willing to sell it to others?—A. Well, I wanted to be sure that I got a party that would not make any trouble for the Hillside Coal & Iron Co.

Q. How was that?—A. I wanted to be sure I got parties interested who would not make any trouble for the Hillside Coal & Iron Co.

Q. What difference did it make to you whether they made trouble for the Hillside Coal & Iron Co. or not?—A. The Hillside Coal & Iron Co. had leased me this property and I did not want them to get into trouble.

Q. When he suggested that Judge Archbald was one of the purchasers, you knew he would not make any trouble for the Hillside Coal & Iron Co. or the Erie Railroad Co., did you not?—A. Yes, sir.

Q. You were therefore willing to sell to him?—A. Yes, sir.

Q. You say that there was no secrecy about the fact that Judge Archbald was interested?—A. Not any.

Q. You drew up the option, did you not, personally?—A. No.

Q. Who did?—A. Judge Archbald.

Q. And you noticed that in the written option Judge Archbald's name was not there?—A. I did; yes.

Q. So that, so far as the option itself shows, nobody was buying this option but Williams?—A. It was what the option showed; yes.

Q. During these negotiations did you go to Judge Archbald's office?—A. I did.

Q. He sent for you, did he?—A. Yes, sir.

Q. When was that?—A. That was very shortly after I first saw Williams.

Q. And you talked with him fully about the transaction?—A. I did; yes.

Q. And was it then you priced it at $3,500?—A. No; I had priced it to Mr. Williams before that.

Q. You priced it to Mr. Williams?—A. Yes.

Q. When you had the negotiations with the du Pont people you were claiming that you and the Hillside Coal & Iron Co. owned all the title to this dump?—A. Yes, sir.

Q. Except the Everharts?—A. The Everharts then did not enter into it.

Q. Were they getting any royalty?—A. I never had any transaction with the Everharts, although I knew they were getting a royalty for the coal that was mined, some part of the coal.

Q. You knew, then, their claim, did you not?—A. Not as the fact stands to-day.

Q. You knew they had a claim of some kind then?—A. Not in the dump; no, sir.

Q. Did you put anything in the option which you gave to these parties about the Everhart interest?—A. I did not.

Q. But the Hillside Coal & Iron Co. did, did they not?—A. I believe they did.

Q. You knew they had been paying royalty to the Everhart estate on the coal that was mined, did you not?—A. On sizes above pea.

Q. And that they had paid that to the Everharts for years, did you not?—A. Yes.

Q. You say that on or about April 11, 1912, you got some notices from Holden & Holden's attorney and other persons about the sale of this property?—A. I did.

Q. Did that deter you from selling the property in any way?—A. Well, I did not make any further attempt to sell it.

Q. That did not deter you, did it? It was not the notices that deterred you, was it?—A. Well, I would have taken some advice before I sold it.

Q. Did you notify Mr. Williams to return the option you had given him for your interest in the dump?—A. No, sir.

Q. As Bradley did?—A. The option had expired by that time.

Q. You did not make any effort to withdraw the option, but just allowed it to stand?—A. I did not consider there was any existing option at all then. It had expired some time previously.

Q. Did you know Holden?—A. No, sir.

Q. When you got this letter from him, it was the first you knew of him?—A. Yes.

Q. Did you learn he had been to May's office on the 11th and May had notified him that they were about to sell?—A. I think Mr. May told me he had had letters from them.

Q. That is not the question. Did you know he had been to May's office and May notified him he was about to sell it?—A. No; I did not know he had been at his office at that time.

Q. Do you know whether or not May suggested to Holden that he had better get in his notice about the claim and have other persons get in their notices?—A. No; I did not learn that.

Q. When did you first learn that the investigation was going on of these transactions?—A. When it first came out in the papers. I do not remember the exact date.

Q. This notice from Bevans & Co. reached you on the 12th or 11th?—A. About that time.

Q. Do you know which date?—A. No, I do not, Mr. STERLING. I kept all the envelopes. The date would be right on the envelopes.

Q. As to this letter from Heckel, administrator, you knew that was the interest on which the Hillside Coal & Iron Co. had been paying royalty for years, did you not?—A. Yes. I did not know anything about the heirs. I did not know who the heirs were until then. I presume these are only a small portion of them.

Q. You knew about the Everhart interest, did you not?—A. Oh, yes.

Q. Had you ever heard of R. M. Saltonstall before?—A. Never.

Q. When you got that letter did you know he had any interest in it?—A. I could not tell whether he had or not.

Q. Do you know what interest he has?—A. No; I do not.

Q. Have you inquired since that time as to what he based his claim on?—A. No, sir.

Q. The reason of it is because you care nothing about it to know that he has no interest?—A. I do not say that; no.

Q. Did you not testify before the Judiciary Committee that yourself and the Hillside Coal & Iron Co. owned all the title to this property?—A. I did. I believed that then.

Q. You believe it now?—A. I do.

Q. Except the Everhart interest?—A. I do.

Q. Therefore, these notices had not any effect at all on you with reference to your attitude toward the sale to Williams and Archbald?—A. The sale to Williams and Archbald?

Q. Just answer my question. Did that have any effect on your mind?—A. I scarcely catch that.

Q. Did the fact that you got these notices on the 11th or 12th have any effect on you with reference to your attitude in regard to going ahead and making this sale to Williams and Archbald?—A. Before?

Q. When you got the notices.—A. Before I received these notices I considered that Williams's option had expired.

Q. I am not asking you about that. You were still willing to carry it out, were you not?—A. I do not think they asked me to carry it out.

Q. You were willing to do it if they had asked you? You knew that Bradley was proceeding to sell the Hillside interest, did you not?—A. I do not think I would have carried it out without consulting my lawyer.

Q. You have never conceded any interest in any of this matter to the Everharts, have you?—A. No.

Q. And you are not conceding anything now?—A. No.

Q. In the option which you made to Williams and Archbald you did not pretend to make any warranty, did you?—A. No, sir.

Q. You were just selling that interest, were you not?—A. That was all.

Q. And if you had gone on and made the sale, and if these persons tried to lay claim then to some title, that would not have affected you in any way, would it?—A. I had nothing to do, only with the mining part of the dump, the mining interest.

Q. You did not pretend to be selling any of their interest anyhow, did you?—A. No.

Q. You talked with Mr. May about the negotiations from time to time, did you not?—A. Yes, sir.

Q. You talked with him about whom you were selling it to, did you not?—A. Yes.

Q. It was understood by you and May right along that you were selling it to Judge Archbald and Williams?—A. Perfectly; yes.

Mr. Manager STERLING. That is all.

Redirect examination:

Q. (By Mr. WORTHINGTON.) Have you made any effort to sell your interest in the Hillside Coal & Iron Co. to Capt. May?—A. I have.

Q. Had you before you gave Williams the option?—A. Yes.

Q. For how long?—A. Ever since the Du Pont people had given up.

Q. He would not buy it?—A. He said that they were not ready to take it; that they had no washery at that time.

Q. You said you first learned of this investigation when it came out in the papers. In what papers did you see it first?—A. I think in the Scranton papers.

Q. So if we find when it first came out in the Scranton papers we will find when you first knew of it?—A. The first I knew of it.

Q. You said you would not have gone on with this negotiation without consulting counsel. Why would you not?—A. I would scarcely care to sell an interest in it until I knew just where the Everharts stood.

Q. I need hardly ask you, but you are not a lawyer?—A. No, sir.

Q. After getting this notice you never undertook to go on with the sale?—A. No, sir.

Q. And you would not have done so until you consulted counsel?—A. I do not think I would.

Q. You said May never did recommend $2,000, so far as you know. Did he not authorize you to go on and complete arrangements with the Du Pont Powder Co. to sell for $10,000 his whole interest?—A. Yes. He understood——

Mr. Manager STERLING. We object to the witness stating what Capt. May understood.

The WITNESS. I had told Mr. May I would sell it to them if they were willing to take it, of course.

Q. (By Mr. WORTHINGTON.) Had you told him you were willing to sell to the Du Pont Powder Co. for $10,000?—A. Yes.

Q. You arranged with May what, if you effected that sale, he would recommend?—A. Yes.

Q. That is, to sell the interest of his company for $2,000?—A. That was understood.

Q. As the counsel asked you, without reading, what you said before the Judiciary Committee, I will read your testimony from page 833:

The CHAIRMAN. Do you know what the Katydid culm bank is worth?
Mr. ROBERTSON. I have no figures to base it on, but I should say it is worth just that $10,000 that I originally offered it for, including royalty.
The CHAIRMAN. You do not know whether it is worth more or not?
Mr. ROBERTSON. It might possibly be worth a little more. These things are gradually increasing in value.

That is what you said?—A. Yes, sir; I said that.

Mr. Manager STERLING. That is what I said, too.

Mr. WORTHINGTON. That is all, Mr. President.

The PRESIDING OFFICER. The witness may retire. Is there any further need for this witness?

Mr. Manager WEBB. Not on our part.

Mr. WORTHINGTON. There is something further we may need him for, but not now. It may raise some question. I want to wait and bring it up at another time.

The PRESIDING OFFICER. The witness will wait until he is further called.

TESTIMONY OF WILLIAM LAW.

William Law appeared, and having been duly sworn was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) Mr. Law, where do you live?—A. Chevy Chase, Md.

Q. Have you at any time lived at Scranton?—A. Yes, sir. I was born in Scranton and lived in that section until 1904.

Q. Were you at any time connected with Mr. Robertson, who has just left the stand, of the firm of Robertson & Law?—A. Yes, sir; from 1891 until 1904; the Katydid colliery.

Q. You have been down here quite a while, Mr. Law?—A. I have lived in Chevy Chase for three years.

Q. You see the map which is right opposite you on the wall? Do you recognize it as a map of the Katydid culm dump?—A. Yes; it looks like it. It has been changed some since I was there.

Q. Your connection with it ceased in 1904?—A. In 1904; that is, before they commenced to wash any of it.

Q. So you do not know much about the contents or value of the bank?—A. No.

Q. You see marked on that map, down in the southwest corner, I might call it, a "conical dump"?—A. Yes, sir.

Q. Do you know what that is made of?—A. I do not know what the cone is made of above ground, but I know what is underneath.

Q. What is it?—A. Ashes and rock.

Q. Can you give us any idea about how high up that ashes and rock come from the surface of the ground?—A. Well, there was a hollow there, you know, and the ashes from the fireroom were hauled out and dumped there for all the years that I was in the business.

Q. How about the rock?—A. The rock was brought there from the Grover slope, what we called the Klondike slope, and the corner slope between 450 and 500 feet deep, 7 feet by 12 in solid rock. That rock is all in that dump. It is not all under that conical pile, but it is all in the dump.

Q. It is somewhere in the Katydid dump?—A. Yes; in the Katydid dump.

Q. Where it can not be seen?—A. Where it can not be seen. It was covered over with culm.

Q. You had ashes below and piled rock on that, and afterwards coal or culm was put on top of the rock? Is that it?—A. Yes, sir.

Mr. WORTHINGTON. That is all, Mr. President, that we have to ask of this witness.

Cross-examination.

Q. (By Mr. Manager STERLING.) Mr. Law, you severed your connection with Robertson in 1904?—A. Yes, sir; I think in June, 1904.

Q. Have you given any attention to this colliery since then?—A. No, sir.

Q. Have you seen it?—A. I have seen it once or twice, but I guess it has been four years ago since I was there.

Q. The colliery was operated for four years after you left it, was it not?—A. Yes.

Q. They continued to add culm there to that dump for four years after you severed your connection with it?—A. Yes; but I might say in explanation——

Mr. Manager STERLING. You have answered the question. That is all I want.

Q. (By Mr. WORTHINGTON.) What was it you might say? I should like to hear it.—A. I say, when I sold out my interest in the mining proposition—that is, the coal in the ground—the reason I sold my interest was that we had that nearly mined.

Q. What you did subsequently was in the way of washing the dump?—A. The tonnage had declined so Mr. Robertson built the washery in order to keep up the output of material.

Q. (By Mr. Manager STERLING.) They did operate the colliery for four years after you left?—A. Yes, sir.

Mr. Manager STERLING. That is all, Mr. President.

Mr. WORTHINGTON. That is all for this time.

The PRESIDING OFFICER. The witness may retire.

TESTIMONY OF JOHN MONIE.

John Monie appeared, and having been duly sworn, was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) Mr. Monie, where do you live, please?—A. Moosic, Pa.

Q. How far is that from Scranton?—A. About 6 miles.

Q. How long have you lived there?—A. For the last 40 years.

Q. How old are you, by the way?—A. Between 50 and 51 years of age.

Q. Were you at any time in the employ of the firm of Robertson & Law?—A. Yes, sir.

Q. In what capacity?—A. Foreman.

Q. Foreman of what?—A. Outside foreman at their colliery.

Q. Where was that?—A. At Moosic.

Q. We want to find out something about the Katydid dump.—A. All right; I will answer the questions if I can.

Q. How?—A. I will tell the truth.

Q. You have not yet mentioned the Katydid dump. Did you have anything to do with it?—A. Yes, sir; I was foreman for 16 years.

Q. You were foreman while that dump was being constructed?—A. Yes, sir.

Q. You see the map on the wall back there?—A. I do.

Q. I wish you would go back to it—you will find a wooden pointer there—and tell us about the material in the different parts of that dump, as far as you know.—A. (Standing at the map and indicating.) Under this conical dump there is an ash pile. They dumped their ashes for about, it may be, 15 to 16 years before that dump was put there. This dump is composed of the slate from the breaker; and the barley is still there, but all sizes above barley were taken out.

Q. Above what?—A. Barley or buckwheat No. 3.

Q. All the chestnut has been taken out?—A. Yes, sir.

Q. The pea?—A. Yes, sir; all sizes such as could be taken out.

Mr. Manager STERLING. I object to the form of examination by counsel, and I think he ought to observe the rule of testimony to some degree.

The PRESIDING OFFICER. What is the objection of managers?

Mr. WORTHINGTON. I will ask that the questions be answered. Go ahead, Mr. Monie, and tell us.—A. There is also

a part of a rock dump here. There has been a slope sunk here [indicating] called the Klondike slope. When that slope was first started we hauled the coal from down about here, up along on this side [indicating] and landed it away up about here [indicating]. We had rock cut, it may be an average of 4 feet deep and about 100 feet long, through here [indicating]. We dumped the refuse from that rock cut in here [indicating]. We had to make a fill there [indicating] to make a grade for the mine track. We took the mined rock from other mines that they had and filled in here, I will say, in the neighborhood of 100 feet. Then at the same time we were making this fill from this side we hauled the culm from the breaker. The breaker stood in around here [indicating].

Q. You hauled what?—A. The culm and slate, and dumped it in here to make this fill. Then we saw we did not have enough of track room out here to make the back branch for the mine cars. We took the rock from this slope and dumped it along. We dumped culm and rock at the same time to form this back branch. That runs out to about here, right in around here some place [indicating]. Then, after that we got a point of dumping ground for the culm, and we decided then to make a fill out through here [indicating]. We also saw that by making a fill through here, instead of hauling the coal up to the breaker in this direction, we could haul it around this way. In order to do that we had to make quite a high fill here. We took the mine rock from all the operations that they had and filled down in around here [indicating]; it may be 100 to 150 feet. I would not say just the exact distance. We came from this point [indicating] and met. That made the track then come around the opposite direction. The reason we had for doing that was it saved a lot of switching. We could hitch on the locomotive and pull up to the breaker, and we would have had to do a lot of switching to go the old way. There is the Klondike slope as they call it [indicating]. That is nearly solid with rock. There is very little of the slush washed down on top if it. It might be 3 or 4 feet deep, but it is practically solid with mined rock; and along in here, from the mouth of the mine, we had to make some filling on the grade [indicating]. All through here, I am not quite sure, but more in this direction, we dumped the rock and the culm side by side to make this back branch. You can see some of the mine rock right about here, I think [indicating]. That is about all I know about it.

Q. Did you remain there until the washery burned?—A. Not until the washery burned. They stopped operations at the end of June, 1908.

Q. The washery burned when?—A. I could not say exactly when, but it was a considerable time after that.

Q. They stopped work before the washery burned?—A. Yes, sir. I was away before that. I stayed with them until July 30, 1908, a month after they stopped.

Q. Did I understand you to say that they had stopped operation before the washery burned?—A. Oh, yes.

Q. Why?—A. Because they were short of water. They only had water enough to run about two hours a day, and it did not pay to run it like that.

Q. How long were you there while they were engaged in washing coal from that bank, trying to win some coal from it?—A. All the time they run; that is, all the time they washed it. I made the changes.

Q. You were in charge of that operation?—A. Yes, sir.

Q. Tell us what you know about getting the size which is called chestnut out of that bank.—A. At the beginning we tried to make chestnut, and we failed utterly.

Q. Why?—A. Because we could not take the slate out to bring it down to the standard that the inspector called for.

Q. What did you do with it then?—A. We just stopped trying to make it and run the stuff back out in the bank.

Q. What is the best part of a culm bank? The old part or the new part, or what?—A. The old part.

Q. The old part is better? Why?—A. Because at one time they did not try to make buckwheat at all. They did make down as low as pea when I went there.

Q. Were there larger sizes on the old dump rather than on the new one?—A. Not any more than what we got out mixed in with the slate.

Q. Tell now what part of the bank was it that Mr. Robertson worked while you were there; was it the old part, the new part, or part of each?—A. That is, which they washed?

Q. Yes.—A. They washed the old part.

Q. They washed the better part?—A. Yes; they washed along in here [indicating]. They stopped their operation when their conveyor line was out here [indicating]. This was considered the best part of the bank right here [indicating].

Mr. WORTHINGTON. That is all, Mr. President.

Cross-examination:

Q. (By Mr. Manager STERLING.) Mr. Monie, point to the southwest corner of the map. You say that is a fill?—A. This was covered with ashes to the depth——

Q. No; that is not answering my question. I undestood it was a fill. Did you say that?—A. Yes, sir; there is a fill from this point here [indicating] running through there [indicating] where it runs out. It took a swing around right out to about there [indicating].

Q. Just show what part of that figure in the southwest corner is a fill; run your pointer around that part of it which is a fill.—A. In about that direction [indicating] probably to about there [indicating].

Q. How wide was that?—A. About 8 feet on the top.

Q. About 8 feet on the top?—A. Yes, sir.

Q. And you filled that up with rock and ashes?—A. With mine rock; yes, sir.

Q. The rock which you got from the colliery?—A. Yes, sir; from the mine.

Q. How high is that conical dump there in the southwest corner?—A. On this side here [indicating] I would say in the neighborhood of 30 feet, or something like that. I do not know the exact height, you understand. I just state that from memory.

Q. How high is it on the other side?—A. Well, it is fully 20 feet more than that—20 or 25 feet.

Q. Fifty feet, then, you would say?—A. Oh, yes; it is fully that.

Q. Fifty or sixty feet?—A. Yes, sir.

Q. And how far across is that part called the conical dump the narrow way?—A. Across this way [indicating]?

Q. Yes.—A. At the top or at the bottom?

Q. Well, both—how wide is it?—A. Well, at the top I should say it is around 20 feet.

Q. And how wide is it at the bottom?—A. Well, I think the natural spread would be about 1½ to 1.

Q. That would be about 30 feet?—A. Oh, it is more than that; a long distance. It is over a hundred feet, I think.

Q. A hundred feet wide and 20 feet high?—A. I think it must be.

Q. You speak about a fill along the northeast line of the map?—A. Right here [indicating].

Q. How deep was that fill?—A. Well, a bluff runs along through here [indicating].

Q. Just run your pointer along the line of the fill.—A. The fill originally, I should say, was in around here and along there [indicating].

Q. How deep is it?—A. Well, from memory I would say it must be 50 feet there [indicating], may be more. It is all of 50 feet, I think, at the higher part.

Q. And how wide?—A. About 8 feet.

Q. And you filled that in with stone?—A. We filled this in with mine rock; yes, sir; for about 100 feet—more or less.

Q. Beginning at the northwest corner of the map where you see the word "culm."—A. Right here [indicating]?

Q. Yes, sir. That indicates that that which is included within that space is culm?—A. It is culm and slate that has been picked out at the breaker.

Q. It is what you call culm, is it not?—A. Yes, sir.

Q. And the space at the right, the figure in the northeast corner there?—A. Along here [indicating]?

Q. Yes.—A. That is culm with the exception of the part here [indicating].

Q. With the exception of the fill, I understand; and through the center, running from the northeast to the southwest?—A. Through here [indicating]?

Q. No; not the slush bank. I am not talking about that.—A. Northeast; here [indicating]?

Q. No; you see the word "culm" about the center of the map?—A. Well, yes; there [indicating].

Q. That is the culm in there, is it not?—A. Well, partly. On that side [indicating] is culm, and on this side [indicating] is rock taken from the mine to help make the fill.

Q. Now, listen to my question. That which is inclosed within the line marked "culm" is culm, and the rock is the rest of the figure there just below the word "culm," is it not? That is the rock, is it not?—A. In around here [indicating]; yes, sir.

Q. Now, the slush bank; what does that mean?—A. That should have been rock bank instead of slush bank.

Q. Well, people do not sell rock banks nor slush banks, either, do they?—A. No, sir.

Q. That is no part of this culm, is it?—A. No, sir. That is almost solid rock.

Q. This culm bank was made in the operation of the Katydid colliery, was it not?—A. Yes, sir.

Q. And it was made just as all culm banks are made at anthracite mines?—A. With the exception of those fills.

Q. By throwing together the coal, the rock, and the slate and whatever comes from the mine?—A. Throwing out the impurities.

Mr. Manager STERLING. That is all.

Redirect examination:

Q. (By Mr. WORTHINGTON.) Mr. Monie, do you mean to say that the proportion of rock, slate, and so forth, to coal is the same in all culm banks?—A. Well, no.

Q. Some are much worse than others?—A. Oh, yes.

Q. From your knowledge of these things, is this a good one or a bad one?

Mr. Manager STERLING. We object. The witness has not stated that he knows anything about any other culm bank than this one.

Mr. WORTHINGTON. One moment. [To the witness:] Do you know anything about any culm banks except this one?—A. Well, I have worked around anthracite collieries nearly all my life.

Q. How does this bank stand for proportion of rock, ashes, and that sort of thing in it, as compared with others?—A. Along here [indicating] it was considered a good dump; that is, rich in fine sizes; but that was all washed in before the colliery stopped. We washed in right through to this point [indicating]. Along in around here [indicating] there is a piece there that is right in the fine sizes. All through here [indicating] and all through here [indicating] there is nothing but barley. There is some rice in here [indicating], but not much. Everything was taken out with the exception of the rice and the barley in this part [indicating], and everything with the exception of the barley, or buck No. 3, as some people call it, in this part [indicating]. So that this [indicating] is of very little value. This [indicating] is a little better, but not much. Right here [indicating] there is a spot that is quite good.

Mr. WORTHINGTON. That is all.

The PRESIDING OFFICER. The witness may retire.

TESTIMONY OF FRANK A. JOHNSON.

Mr. WORTHINGTON. Call Mr. Johnson, please.

Mr. Frank A. Johnson, being duly sworn, was examined and testified as follows.

Q. (By Mr. WORTHINGTON.) Mr. Johnson, give us your full name, please.—A. Frank A. Johnson.

Q. Where do you live?—A. Moosic, Pa.

Q. Near Scranton?—A. Yes, sir.

Q. How are you employed now?—A. I am the general coal inspector for the Hillside Coal & Iron Co.

Q. How long have you been general inspector of the Hillside Coal & Iron Co.?—A. About nine years.

Q. Did you at any time make any examination of the Katydid dump near Moosic?—A. Yes, sir.

Q. When and why?—A. I made an examination and tested the Katydid dump on April 4, 1911.

Q. At whose request; did you say?—A. Mr. May's chief clerk instructed me to do so.

Q. On April 4, 1911?—A. I believe that was the date; yes, sir.

Q. What knowledge had you before that time about this dump and where it was built or made?—A. Well, I had been on that ground daily or weekly for 17 or 18 years.

Q. Did you see the dump as it went along building from day to day?—A. Yes, sir.

Q. For that length of time?—A. Yes, sir.

Q. Now, I wish you would state when you went there, on or about the 4th of April, 1911, what did you do and what conclusion you reached?—A. Mr. May's chief clerk instructed me to meet Engineer Merriman there, and that I should sample the bank, which Mr. Merriman was going to measure.

Q. Mr. Merriman, I believe, is dead, I may ask you here?—A. Yes, sir. I met Mr. Merriman on the morning of April 4, and he, knowing that I was familiar with the surface and the contour there and conditions generally, asked me to tell him all I could about such conditions to enable him to make a good, accurate measurement of the bank, and I did. I think I spent about an hour with Mr. Merriman; walked over the bank with him and pointed out any conditions that I knew about.

Q. Do you know about what kind of material is in the different parts of the dump as it stands now? I will ask, in the first place, if you know?—A. Yes, sir.

Q. I wish you would go back to the map which you see on the wall opposite you, Mr. Johnson. There is a pointer there which I wish you would use and let us know what your knowledge on that subject.

Mr. CLAPP. Mr. President, I desire to call the attention of the managers and counsel for the respondent, if it is proper to do so, to the fact that in the examination of the last witness, outside of where the witness accompanied the physical act of using the pointer with some word upon that map, there can be nothing in the record to show what part of the map he pointed to. There are Senators who are engaged in committee work who can not be here; and it occurred to me to suggest that the description that "there is some coal here and not much there" would be absolutely useless to those who read the record. It would seem to me that wherever a witness points to some one place on the map it should be accompanied by some statement or designation by which those who read the record may know just where the witness pointed. I feel that there is no impropriety in making the suggestion.

Mr. WORTHINGTON. I am obliged for the suggestion, and I will say that counsel for the respondent appreciate the fact to which the Senator has alluded. I will suggest that the witness be given a red lead pencil and that he mark the places on the map, which the Reporter may take down.

Q. (By Mr. WORTHINGTON.) Now, if you will go ahead, Mr. Johnson, I will tell you when you are to make a mark, or you can of your own motion make a mark. I suggest that you make letters.—A. Well, I walked all over this bank with Mr. Merriman and while, of course, I do not know what the words I used at that time were——

Mr. WORTHINGTON. I do not hear you.

The WITNESS. While I do not know what words I used or just exactly how I stated the case to Mr. Merriman at that time, I probably told him all I knew, which was that over in here [indicating] was mine rock.

Mr. WORTHINGTON. Put the letter "A" on the map right there.

The WITNESS. On that over in here [indicating on the chart] the mine rock extended under the culm, and somewhere over in here [indicating on the chart], or I should say about in there somewhere [indicating]——

Mr. SIMPSON. Put the letter "B" there.

The WITNESS. Very well. On that over in here [indicating] there was also a quantity of mine rock under the culm, and also under this high bank here [indicating]——

Mr. WORTHINGTON. That is what was called the "conical dump," is it not?

The WITNESS. Yes, sir. And that under this bank here [indicating], was a quantity of mine rock and ashes; also a portion of this bank here [indicating] had been through the operation a second time, and was what you might call waste. I do not remember of any other particular condition that I told Mr. Merriam about.

Q. Did you have any personal knowledge of the laying down of two banks there together, one of rock and one of culm?—A. Yes, sir; I did.

Q. That was where?—A. Where was that done?

Q. Yes, sir; in what part of the bank?—A. Under the culm, in here [indicating] and under the culm in here [indicating], as I remember, and also under this bank here [indicating].

Q. Is the rock of which you speak that was used in building that bank or laid there visible from the surface? You spoke of rock and culm being laid down together.—A. No, sir; it is not visible now, or was not when we estimated the bank.

Q. Is there any way of telling where the ashes and rock are without digging down for them or unless a person had seen it before the culm was put on the dump?—A. No, sir; it is completely covered.

Q. I wish you would explain what the effect would be as to a person making a survey of the quantity of culm in the bank of having the rock laid where you say it was in connection with the culm, side by side.—A. Well, if the man making the measurements would include this rock, which is in three places in the bank, of course, he would very materially increase the amount of culm which he would suppose was there.

Q. Why?—A. Well, because it is not culm or material that can be redeemed.

Q. Well, would not the appearance of the culm in one be very different from what it was in the other?—A. Oh, yes; it would drop off here [indicating], instead of sloping off.

Q. I am referring particularly to the point where you put the letter "B."—A. Right in here [indicating]. Well, that would be about the same thing, as I remember it. Those two piles were made together, parallel rock and culm.

Q. So much for the history of the bank. Now, what did you do in the way of taking samples in trying to find out what was in this bank when you went there with Mr. Merriman?—A. I took six samples from the bank—that is, this part of the bank [indicating]. I did not take any samples from that part [indicating], because Mr. Merriman told me he was not going to include it in his measurements.

Q. That he was not going to include what?—A. This part here [indicating]; this bank here.

Q. He left that bank out altogether, did he?—A. He told me that he was going to leave it out.

Q. You say "this part." You mean the part marked the "conical dump" on the map?—A. Yes, sir.

Q. He left that out altogether?—A. Yes, sir; I understand he did; he told me at that time that he was going to do so.

Q. While on this subject, had you had any instructions from Capt. May or from anybody else in regard to finding out just what coal was there, so that Mr. May would know what property his company had?—A. Mr. May's chief clerk told me to go and sample the bank.

Q. Did you know what the object was or for whom it was intended?—A. No, sir; as I remember now, I did not know whether the bank was being sold or bought.

Q. Had you any object in view when you went there to make a report to Capt. May except to estimate truthfully and definitely, as nearly as you could, the amount of coal that could probably be won from that bank?—A. No, sir; I was after, as nearly as I knew how to get it, the exact condition of the material.

Q. You made the tests. Have you got a result of your test?—A. Yes, sir; I have.

Q. I should like to have it, please.—A. I have in my pocket the figures I set down.

Q. Have you that computation?—A. I have the figures as I put them down that day on the culm pile.

Q. Have you had them copied?—A. I made a report to Mr. May on the next day. I do not know where that report is; but I have a copy of the report that was sent to Mr. May in my pocket.

Q. Very well. That shows your figures, does it?—A. Yes, sir.

Q. Does it agree with those you made that are in your memorandum book?—A. It does; yes, sir.

Q. Well, let us have that; it is the same thing.

Mr. WORTHINGTON. May I ask the managers if they did not get from Capt. May the original report which this witness made to him?

Mr. Manager STERLING. I do not think that we ever had it, Mr. Worthington.

Mr. WORTHINGTON. I offer this in evidence and request the Secretary to read it.

The PRESIDING OFFICER. The Secretary will read as requested.

The Secretary read as follows:

[U. S. S. Exhibit S.]

DUNMORE, PA., *April 5, 1912.*

Mr. W. A. MAY, *General Manager.*

DEAR SIR: In accordance with instructions from your office I yesterday examined and made tests on the culm bank of the abandoned Katydid operation. The Katydid Co. worked a scraper line through the center of the largest part of this bank, and I was enabled to get samples yesterday which I believe give a very good average of the condition of the whole pile. There is no indication of present or past fire, and what coal the bank contains is of good appearance and quality.

Record of tests for sizes.

Sample No.—	Stove and above, over 1½-inch mesh.			Chestnut through 1½-inch, over ¾-inch.			Pea through ¾-inch square, over ⅝-inch round.	
	Coal.	Bone.	Slate.	Coal.	Bone.	Slate.	Coal.	Slate.
	Per ct.		*Per ct.*	*Per ct.*		*Per ct.*	*Per ct.*	*Per ct.*
1	5	0	5	0	0	0	2	0
2	2	0	8	2	0	4	1	0
3	5	0	7½	1	0	4	1	1
4	0	0	0	0	0	0	0	0
5	4	0	4	0	0	0	0	0
6	0	0	0	0	0	0	0	0
Total	16	.....	24½	3	.....	8	4	1
Average	2.6	.....	4.1	0.5	.....	1.3	0.7	.....

Sample No.—	Buckwheat coal through ⅜-inch round, over ⅛-inch round.	Rice coal, through ⅛-inch round, over ⅛-inch round.	Barley coal through ⅛-inch round, over ⅛-inch round.	Culm through ⅜-inch round.
	Per cent.	*Per cent.*	*Per cent.*	*Per cent.*
1	30	14	20	24
2	10	11½	33	28½
3	5	7½	32½	35½
4	7½	17½	35	40
5	10	12	32½	37½
6	10	14	34	42
Total	72½	76½	187	207½
Average	12.1	12.7	31	34.6

Yours, very truly,

F. A. JOHNSON,
General Inspector.

During the reading of the table,

Mr. Manager STERLING. Let us have the interpretation of those initials as the reading proceeds, Mr. Worthington.

Mr. WORTHINGTON. Very well. Let the witness state what the initials are.

The WITNESS. "R D" means round instead of square mesh. "C., B., S." means coal, bone, and slate.

Q. (By Mr. WORTHINGTON.) Mr. Johnson, what did Mr. Merriman do in connection with this investigation? What was his branch of the inquiry you made there?—A. His work was to measure and estimate the amount of culm.

Q. Did he make measurements?—A. Yes, sir.

Q. Were his report and yours turned over to anybody?—A. My report was turned over to Mr. May.

Q. What conversation did you have with Mr. May about it?—A. I do not remember of ever having any conversation at that time.

Q. Why did you omit the conical dump?—A. Because, as I have said, a good part of the conical dump had been worked over the second time. It had been through the operation twice, and therefore was very poor. Again, the good part of it, the best of it I might say, was composed of material entirely worthless. We talked that over at some length. I remember distinctly that we did.

Q. Did you both agree in your conclusion that it would not pay to try to get anything out of it?—A. We did; yes, sir.

Q. Did you so report to Capt. May?—A. Not at that time; no, sir.

Q. It was later?—A. Some time later; yes, sir; we did.

Q. Can you give us your opinion as to whether or not it is possible to work any of the prepared sizes of coal out of this dump; what you call chestnut or over?—A. No; I do not believe it is practicable to win the large sizes, because I have personal knowledge of the fact that the Robertson & Law Co. tried to do that and failed.

Q. Did you later have a conversation with Mr. May about this investigation or the result of it?—A. I did.

Q. When was that?—A. Some time later; I should say about a month or six weeks; it might have been two months; I do not know. Mr. May came to my office in Dunmore, which is next to his, and he had the reports, Mr. Merriman's report and some other papers in his hand, and he referred to a note which was either on Mr. Merriman's report or map; I do not remember which; and he asked me what that note meant. I remember the note. I believe I had——

Mr. BRYAN. Mr. President, it is very difficult to hear the witness.

The PRESIDING OFFICER. The witness will speak louder. He will speak as loud as he can.

Q. (By Mr. WORTHINGTON.) What was the note you saw on these papers that Capt. May asked you about?—A. As I remember it, the note read, "55,000 tons, not including slush and rock heap, as per recommendations of F. A. J."

Q. "F. A. J." being yourself?—A. Yes, sir. Mr. May pointed to that notation and asked me what it meant. I told him that it meant the high pile of refuse at what I think was the southwest end of the big pile. I told him that it meant that pile of slush and rock which had been put out of late years and was very poor, and we left it out, because we did not believe it ought to be included in the regular bank. He said he wanted to be sure of that. He said that he wanted to be sure that Mr. Merriman did not mean 55,000 tons of material outside of the refuse reported in my percentages.

Mr. WORTHINGTON. That is all of this witness, Mr. President.

Cross-examination:

Q. (By Mr. Manager STERLING.) I wish you would look at this report, Exhibit S. There you have the average per cent of the different grades of coal, have you not?—A. Yes, sir.

Q. Begin and read the average percentage of the different grades, beginning with the larger-sized coals—just the coal and nothing else.—A. Stove and above, 2.6 per cent; chestnut, five-tenths of 1 per cent; pea coal, seven-tenths of 1 per cent; buckwheat, 12.1 per cent; rice, 12.7 per cent; barley, 31 per cent; culm, 34 per cent.

Q. What is culm? Is that coal?—A. No, sir. That is what we call what we get when we wash—slush.

Q. I am asking you about the coal only. You would not count that culm as a part of the merchantable coal?—A. No, sir.

Q. What is the total percentage of merchantable coal that you have read from that report, including all kinds?—A. I could not state without putting the percentages together here now.

Q. Never mind it, then, for the present. What official position do you hold with the Hillside Co.?—A. I am the general coal inspector in charge of the coal inspection for the Hillside Co.

Q. Who was the engineer of that company at that time?—A. Mr. Merriman.

Q. And you went with Mr. Merriman at one time to view this Katydid dump?—A. Yes, sir.

Q. When was that?—A. April 4, 1911.

Q. You talked with him for some hours there on the dump?—A. About an hour, I should think.

Q. You told him where the culm was?—A. I did not tell him where the culm was so much as where the other material was.

Q. You told him where the fill was in the southwest corner of the map that runs up into the part called the conical dump?—A. Yes, sir.

Q. You told him that was filled with rock and ashes?—A. Yes, sir; I believe I did.

Q. You showed him the fill on the east side of the map and told him it was filled with rock?—A. Yes, sir; I believe I did.

Q. You pointed out to him all those parts of the pile that were made up of slate and stone and ashes?—A. Yes, sir; I believe I did.

Q. Then it was your duty to take samples of this and wash it?—A. Not to wash it.

Q. What did you do with it? How did you separate the coal?—A. I took each sample and kept it by itself; dried it on pieces of canvas, and then put it through hand screens.

Q. You cleaned out the coal?—A. Yes, sir.

Q. You did that in six different places?—A. Yes, sir.

Q. And you got the result which you have just read?—A. Yes, sir.

Q. Then what was the engineer's duty?—A. His duty was the measuring of the contents of the pile.

Q. To measure the number of cubic feet in the culm bank?—A. Yes, sir.

Q. He did not measure those parts of the culm bank that you pointed out to him were stone and ashes and slate?—A. I do not know.

Q. He would not naturally do that, would he?—A. No, sir; I do not think he would.

Q. He was not expected to find out the cubic feet of any of those materials?—A. No, sir; I presume not. I do not know.

Q. How many cubic feet did he find there were in the culm bank?—A. I can not say.

Q. Did you not see his report?—A. Yes, sir; possibly I did.

Q. Did not Mr. May show his report to you and call your attention to a note on the report?—A. No, sir. As I remember, he showed me a map which said "55,000 tons." I do not know whether the map said the number of cubic feet.

Q. Fifty-five thousand tons of what?—A. Of material.

Q. Coal or culm?—A. Altogether, coal and culm.

Q. Do you know whether that meant that there were 55,000 tons in all of it, outside of the conical dump, or in certain parts of it? [A pause.] All you know about it is what you saw on the map?—A. Yes, sir; that is all.

Q. Did you make an estimate or did you get any data from this engineer's report from which you made an estimate of the amount of coal?—A. No, sir. My report was turned over to the engineer and he made an estimate.

Q. Just take time to figure up the percentage of coal there, will you, Mr. Johnson?—A. (After a pause.) I make it 59.6 per cent.

Q. Fifty-nine and six-tenths per cent of coal?—A. Yes, sir.

Q. Did you ever see Mr. Rittenhouse's report?—A. Yes, sir; I have read it.

Q. Do you know or have you any knowledge of the number of tons in the bank—I mean gross tons now?—A. Only as I remember that figure on the map—55,000 tons.

Q. As a matter of fact, did not your engineer's report say there were 80,000 tons of culm?—A. I do not know that it did.

Q. Did you not know that he submitted it to Robertson and that Mr. Robertson said it was 80,000 tons?—A. No, sir; I do not know anything about that.

Q. You do not know whether the 55,000 tons meant coal or gross, do you?—A. Yes, sir; I believe I do.

Q. Do you know it from anything the map said?—A. Yes. I understood the note of Merriman's to say that.

Q. State now what the note said.—A. I will have to state it from memory. I have never seen it from that day to this.

Q. State it from memory.—A. I believe it said "55,000 tons, not including slush and rock heap, per F. A. J."

Q. What does "F. A. J." mean?—A. That means me.

Q. Now, would it not necessarily mean that that was the amount of coal, because you had tested the amount of coal that was in this material?—A. No, sir; I do not think it would.

Q. Had you anything to do with determining the amount of gross tons or the amount of cubic feet in the dump?—A. Nothing whatever.

Q. Not a thing?—A. Not a thing.

Q. Then, inasmuch as it said "per F. A. J.," meaning yourself, who had tested the percentage of coal, it must necessarily have meant that there were 55,000 tons of coal. Do you not think that would be the reasonable interpretation of it?—A. No, sir; I do not.

Q. Did you ever compare your report of 59 per cent with Mr. Rittenhouse's return of 51 per cent?—A. No, sir; I have not. I have never put them together until this morning.

Q. Did you ever know that you made 8 per cent more coal in that dump than Mr. Rittenhouse said?—A. No; I did not.

Q. You say that your engineer did not measure the cubical contents of the conical dump in the southwest corner of the map at all?—A. He told me that he was not going to measure it.

Q. And you told him——A. That I was not going to sample it.

Q. And you did not sample it?—A. No, sir.

Mr. Manager STERLING. That is all.

Redirect examination:

Q. (By Mr. WORTHINGTON.) Did you know Mr. Rittenhouse had figured on a very much larger proportion of valuable coal than you had?—A. I did.

Q. You knew that?—A. Yes, sir.

Mr. Manager STERLING. We object.

Q. (By Mr. WORTHINGTON.) What did you understand was meant by the term "F. A. J." in that memorandum?—A. I understood it to mean my recommendation on that conical pile.

Q. That was the reason it was omitted?—A. Yes, sir.

Q. Do you know why it is we have not got Mr. Merriman's report?—A. No; I do not.

Q. Do you know whether or not it was brought down here by Capt. May—all those papers—before the Judiciary Committee last spring?—A. I do not know anything about it, sir.

Mr. Manager STERLING. Do I understand counsel to claim that that was submitted to the committee?

Mr. WORTHINGTON. That is my information, that those papers——

Mr. Manager STERLING. I should like to know what it is.

Mr. WORTHINGTON. The next witness, I understand, has some light on that subject, and we will ask him.

Q. (By Mr. WORTHINGTON.) Can you give us an idea about the gross tons in that conical dump we have been talking about—about what the whole amount of material in it was?—A. Just as it stands now?

Mr. WORTHINGTON. Yes.

The WITNESS. I should say 15,000 tons.

Mr. WORTHINGTON. That is all.

The PRESIDING OFFICER. Is it desired that this witness shall be retained?

Mr. WORTHINGTON. No, Mr. President.

The PRESIDING OFFICER. The witness is finally discharged.

Mr. WORTHINGTON. Call Mr. Jennings.

TESTIMONY OF JOSEPH P. JENNINGS.

Joseph P. Jennings, being duly sworn, was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) Where do you live, please?—A. Moosic, Pa.

Q. May I ask your age?—A. 32 years of age.

Q. How long have you lived in that neighborhood?—A. I have lived in Moosic for the past seven years.

Q. What is your business now?—A. I am general inspector of mines for the Hillside Coal & Iron Co.

Q. How long have you held that position?—A. Since February 1 last.

Q. Before that what was your position?—A. Before that time I was superintendent of the Avoca district for the Pennsylvania Coal Co.

Q. In those positions have you become familiar with the coal business in the region, and especially that part which pertains to coal dumps?—A. Yes.

Q. Did you have anything to do with the Katydid dump, near Moosic, when it was building or making?—A. When it was making?

Q. Yes.—A. Nothing more than at that time I was working on the engineer corps and I passed there from time to time.

Q. Have you recently made any efforts for us to find out what is in that dump and what it is worth?—A. I have.

Q. What have you done?—A. In the early part of November Mr. May handed me Mr. Merriman's notebook and a little map that Mr. Merriman had made of a survey of the Katydid dump, and he asked me to go over Mr. Merriman's work and verify it.

Q. Was that last November?—A. That was in November past; yes, sir.

Q. Mr. Merriman is dead?—A. Mr. Merriman is dead; yes. He died last September.

Q. Where did you get his figures?—A. From the original notebook.

Q. Have you them here?—A. No, sir; I have not.

Q. Where are they?—A. They are at the office in Dunmore.

Q. Did you make a report to Mr. May after you made the investigation?—A. I did.

Q. When did you do that?—A. A few days after that.

Q. Where is that report, Mr. Jennings?—A. I have a copy of it in my pocket.

Q. I know; but where is the original now?—A. Here is the report [producing paper].

Q. Very well. Let us have it. Do you know whether Mr. Merriman made a report from the material he had?—A. I understood he did, and I understood from Mr. May that it was left here with the rest of his papers.

Q. When?—A. When he was here before the House committee.

Mr. Manager STERLING (after examining paper). We object to it.

Mr. WORTHINGTON. May I ask on what ground?

Mr. Manager STERLING. It is not Mr. Merriman's report. It is just what this gentleman said he drew from Mr. Merriman's report. It is nothing but hearsay evidence.

Mr. WORTHINGTON. We have proved that Mr. Merriman is dead, and that his investigation was made for the Hillside Coal & Iron Co., and this gentleman has taken his figures.

Mr. Manager STERLING. That does not excuse you from producing his report here. If the witness had the report there from which to make his estimate, you have the report.

Mr. WORTHINGTON. The witness says that Capt. May brought it down here and left it with the Committee on the Judiciary of the House of Representatives.

Mr. Manager STERLING. He never did.

Mr. Manager WEBB. This estimate was made in November.

Mr. Manager STERLING. This was made in November, since the committee held its meetings, which were last summer.

Mr. WORTHINGTON. Mr. Merriman made his report——

Mr. Manager STERLING. No; the witness said he made this estimate in November.

The WITNESS. I made that report [indicating].

Q. (By Mr. WORTHINGTON.) You made this up from Mr. Merriman's notebook, and not from his report?—A. Not his report. I took the notes he made on the field and worked up the information from it.

Q. That notebook was left with the company and was found, after Mr. Merriman was dead, as a part of the papers of the company?—A. Yes, sir.

Q. It is one of the papers upon which Capt. May acted in what he did in this matter?—A. Yes, sir.

Mr. WORTHINGTON. I submit, inasmuch as the charge here is that Capt. May undertook to favor Judge Archbald by giving him this dump for less than it was worth, that the Senate ought to have the information Capt. May had when he made his recommendation or agreed to make it.

The PRESIDING OFFICER. The Chair understands that this evidence is sought to be introduced because of the death of the man who made the original paper.

Mr. WORTHINGTON. The man who made the original report is dead. His official report to Capt. May was on file, and this gentleman took that report and from it prepared this paper.

Mr. Manager STERLING. Our objection to it is that it is purely in the nature of hearsay evidence. We do not know whether he has correctly computed it from the notes made by Mr. Merriman. We are not bound by what he says as to what those notes indicate. We are entitled to the notes, if they are competent evidence at all, which we are not admitting at present.

The PRESIDING OFFICER. The Chair is unable to see how the death of Mr. Merriman would affect it in any way. It would still be competent for some other person to make the same examination.

Mr. WORTHINGTON. What we wish to bring out is what information Capt. May had when he made that recommendation.

The PRESIDING OFFICER. That can be proved by Mr. May.

Mr. WORTHINGTON. And if it was that the dump was worth only $5,000——

The PRESIDING OFFICER. If Capt. May was on the stand and the question was put to him upon what he made his estimate, it would be legitimate testimony, but not as an independent piece of testimony.

Mr. WORTHINGTON. He has already testified that when he received the letter of March 31 from Judge Archbald, which is in evidence, asking if the dump was for sale, he directed this investigation to be made; and it was on this investigation and the result communicated to him that he took the action he did.

Mr. Manager STERLING. But it was not on this report that Mr. Jennings presents now, because this was not made until November last.

Mr. WORTHINGTON. Jennings is simply presenting his calculations based on Mr. Merriman's notebook.

Mr. Manager STERLING. Then I presume the Senate will have to interpret it.

Mr. WORTHINGTON. Then we will have to let this witness stand aside and send for the notebook on that point.

Q. (By Mr. WORTHINGTON.) You can get that notebook and have it sent here?—A. Yes, sir; I can get it.

The PRESIDING OFFICER. The Chair does not wish to be understood as holding that the notebook would be competent evidence.

Mr. WORTHINGTON. No.

The PRESIDING OFFICER. The Chair simply went to the extent of saying that Capt. May would, in the opinion of the Chair, be a competent witness as to the information upon which he based his action.

Mr. WORTHINGTON. I think he has already done that.

The PRESIDING OFFICER. That, I think, is as far as can be done. It is still competent for counsel for the respondent to prove the value by some other witness. That fact is equally ascertainable by some other witness. It is not in the sole knowledge of the person who is dead.

Q. (By Mr. WORTHINGTON.) Mr. Jennings, have you had anything to do with what is called the Consolidated Washery operation which is in the vicinity of the Katydid culm bank?—A. I have, sir.

Q. What did you have to do with it?—A. The washery was built under my supervision. I had charge of the consolidated colliery from March 1, 1909, until February 12, 1912.

Q. Will you tell me whether that washery is equipped to handle coals of the size of chestnut and above?—A. We can handle some chestnut, but none above.

Q. As a matter of fact, have you been handling any chestnut?—A. We have handled some.

Q. Why do you not handle more of it?—A. Because we can not clean it; we can not do anything with it.

Q. Why?—A. Well, the amount of coal in the material is so small that we can not clean it. If you have a mixture of coal and rock, say 10 or 15 per cent of coal and the balance rock, it takes an enormous amount of machinery to get that coal out of the rock, or the rock out of the coal.

Q. Which is the richer bank, the one the Consolidated is working or the Katydid?

Mr. Manager STERLING. We object to that as immaterial.

Mr. WORTHINGTON. I remember hearing something very early in the course of this trial about objections not being made here of the kind that are made in the ordinary courts of justice; but it seems that we have got away from that now. Mr. Rittenhouse's estimate, which Capt. May got when he took the action about this matter, has been introduced in evidence, and it shows by a computation, and it was given in testimony, that there were over $17,000 worth of chestnut coal in the Katydid dump. We have given some evidence in regard to it, and now we want to show that another bank in this immediate vicinity, operated by the Consolidated Washery, that was referred to by Mr. Rittenhouse—a much richer bank—can not be worked so as to get the chestnut out of it to any advantage, and that it is much more impossible to do it than the Katydid dump.

Mr. Manager STERLING. We object to it as plainly immaterial, as to what another bank of any quality, any kind of coal, may be.

The PRESIDING OFFICER. Counsel for the respondent will recognize that if that were admitted in evidence the managers would be entitled to take issue on it, and then the whole investigation would necessarily be had as to what was the value of the coal in another bank.

Mr. WORTHINGTON. I remember when I objected to Mr. Rittenhouse's testimony. I said we would get into a long wrangle on expert evidence as to the value of the Katydid bank, and as to matters about which Judge Archbald did not know anything; that it would take a great deal of time; and I remember that the Chair reminded me that the fact that it would take a great deal of time would not justify the exclusion of any relevant testimony.

The PRESIDING OFFICER. That is true, if it was relevant, but it certainly is not competent to go into the contents of every other bank with which counsel might desire to compare this bank.

Q. (By Mr. WORTHINGTON.) Let me put it this way: Tell me to what extent, if at all, it is possible to reclaim from the Katydid dump coal of chestnut size and over to be marketed.—A. It is not practicable to reclaim it.

Q. Why?—A. It would cost many times—it would cost four times more to get it out than what you would get for it.

Q. Why?—A. Because there is so little coal compared with the amount of rock that the immense size of the buildings and the costly appliances you would have to buy in order to separate them to start with would cost four times as much as the coal is worth.

Q. Did you go on this dump at any time with Capt. May?—A. I did; yes, sir.

Q. When was that?—A. It was along the latter part of May, 1911.

Q. Will you tell us whether or not you communicated to him at that time the views you have expressed here about this dump?—A. I did. He told me there was a chance to sell that dump, and he took me down and went over the ground and asked me what I thought of it, and I told him that I thought he had better sell it.

Q. Did you tell him why—give him any reasons?

Mr. Manager STERLING. We object to that as immaterial.

Mr. WORTHINGTON. Here, Mr. President, we are getting a communication right to Capt. May by his trusted subordinate.

The PRESIDING OFFICER. What was the question?

Mr. WORTHINGTON. The whole theory about this matter on the part of the managers is that Capt. May undertook to favor Judge Archbald by selling him what he would not otherwise sell.

The PRESIDING OFFICER. What was the question?

Mr. WORTHINGTON. I am asking whether he was on the dump on the 23d of May, 1911, or about there, months before Mr. May had written this letter of August 30, in which he said he would recommend this sale; that his trusted subordinate, who had examined it and knew all about it, advised him to sell it, and he did not know, I take it, any more about Judge Archbald's connection with it than I did.

The PRESIDING OFFICER. The Chair thinks it is competent, but will hear from the managers.

Mr. Manager STERLING. I can not conceive how a conversation between this witness and Capt. May is competent in any view of the case. Neither of them was a party to this proceeding. The very fact that he was the confidential adviser of Capt. May is the main reason why it is not competent in this case at all. We can not be bound by anything that he said; that one witness said to another; that one person said to another, who is not a party to this proceeding. It was purely a conversation between this man and May. It does not go to the issue at all in this case.

The PRESIDING OFFICER. The Chair thinks that the general proposition stated by the managers is correct, but that it is competent for counsel to show what was the information upon which Mr. May acted.

Q. (By Mr. WORTHINGTON.) I do not remember how far you had gone. What did you say to Capt. May at that time on the subject of the sale of the dump?

The WITNESS. I told him that when Robertson & Law started again to wash that dump, all we would get would be the royalty we would pay, and it was just a question with us of waiting to get our money by actual shipment or taking the money; that is, we had a very unstable agreement upon which we operated this mining, at least a part of it, on lot 46; and if we sold it it would be off our hands and we would have the money.

Q. At that time did you know anything about Judge Archbald having any communication with Capt. May about this matter?—A. No, sir.

Q. Or having any interest at all in it?—A. No, sir.

Q. I will ask you this question, without reference to that particular dump: Do you know what the custom is in culm dumps as to trying to save chestnut and above?

Mr. STERLING. I object.

The PRESIDING OFFICER. The counsel will repeat the question.

Mr. WORTHINGTON. I am asking what is the practice in the dumps in that anthracite region as to attempting at all to save or win, as the word they use, chestnut or sizes above from these culm dumps, to show that it is the universal practice and custom there to refuse to do it because it is impossible to do it to advantage. I understand the Chair has already ruled we can not show specially this or that particular dump; but certainly I ought to be allowed to show the custom in that matter, because, as a particular item of value of this dump, the expert Rittenhouse makes it over $17,000 for chestnut coal.

The PRESIDING OFFICER. The Chair thinks that counsel is entitled to show whether or not it was worth anything.

Q. (By Mr. WORTHINGTON.) I will put it this way. Tell us what was the market value of chestnut coal in culm dumps in the neighborhood of Scranton in 1911.—A. I know one fellow that washed a car of chestnut coal——

The PRESIDING OFFICER. The question is whether the witness knows the value of it.

Mr. WORTHINGTON. I put it that way because the Chair ruled I could not put it the way I did. What was the market value of coal of the size of chestnut or above in the culm banks in that region in 1911?—A. Anything you could get for it.

Q. What could you get for it?—A. I do not know. We never sold any.

Q. You never sold it?—A. Only to the local trade.

Q. We have had some testimony here about the possibility of taking the coal from the Katydid dump to the consolidated washery and doing it to advantage. You are quite familiar with the washery and with that whole region, I believe?—A. Yes, sir.

Q. I would like to have your judgment as an expert and one having a full knowledge of the situation as to whether or not that would be a practicable thing.—A. It would not be practicable.

Q. Why?—A. It would cost too much to get it up there.

Q. How much would it cost, and why would it cost so much?—A. The first installation would cost well up to $10,000 to get started.

Q. Do you say under $10,000?—A. Well on to $10,000, in round figures, to build what we call scraper lines from the consolidated washery down to the Katydid dump. The scraper lines are made in sections of about 500 feet, depending upon the kind of ground you have to operate on. The ground to the Katydid dump runs quite a grade, from big ledges of rock. I do not think you could get over 400 feet to a section. The shape of the Katydid dump is very irregular and the scraper lines would have to be moved in straight lines, so that it would take five or six lines to get hold of the dump. With each of these lines you would have to put in engines to drive it. You would have to put in pipe lines and pumps, in order to wash the culm. A steam line from our consolidated scraper down right through would cost about $10,000 to get started.

Q. What would that material which cost $10,000 be worth when you got through and the culm was washed out?

Mr. Manager STERLING. We object, because this witness could not possibly state what it would be worth. He could not know what condition it would be in.

Q. (By Mr. WORTHINGTON.) Do you know anything about the value of scraper machinery?—A. Yes, sir.

Q. Does your experience in that business qualify you as an expert?—A. In our experience in the business, after a scraper is used in mining, what we have to use——

Mr. Manager STERLING. Mr. President, we object to any such testimony as this, asking what the machinery would be worth after it had been used. How can the witness tell what it would be worth? How can any human being tell?

Q. (By Mr. WORTHINGTON.) Is it possible to tell about what a scraper line is worth after the dump to which it has been built is exhausted?—A. It is.

Q. I will take your word for it, as far as I am concerned, and ask you what that scraper line would be worth after the dump is exhausted?

Mr. Manager STERLING. I object.

Mr. WORTHINGTON. Our friends on the other side insisted upon putting Mr. Rittenhouse on the stand and giving expert testimony that, among other things, it was a great favor to Judge Archbald to offer to sell the interest of the Hillside Coal & Iron Co. in this dump to him for $4,500, because it could have built a scraper line down to the consolidated washery and operated it themselves and made money. Is it not competent to show, as we have shown, that they would have had to put in an extra plant and bring the washery around at a cost of $10,000, when we find here somebody who knows, and ask him what that scraper line would be worth when the dump to which it was built was gone?

Mr. Manager STERLING. Mr. President, how is it possible for this witness to know what condition it would be in after it had been used for this purpose? I say it is absolutely impossible for him to know, unless he knows what condition it would be in, what the market price of those things would be at that time. It might be 10 years from now. We do not know how long it would take to operate it. We should not have witnesses come on the stand and guess about such things. It is what Senators can guess about.

In regard to this testimony, while I have the floor, Mr. President, I desire to say this. Counsel say the purpose of the testimony is to show the knowledge which Mr. May acted on when

he made this proposition. Mr. May has testified in this case, and he testified himself that, in his judgment, there were 45,200 tons of coal, and it is in the record, and I read it from his testimony. He testified to it before the Judiciary Committee and said it was true that there were 45,200 tons of coal. Are counsel trying to rebut the testimony of May himself, who says that is the knowledge he had and on which he acted when he made the proposition?

The PRESIDING OFFICER. The Chair thinks the question would be too indefinite unless counsel can indicate the degree of use, the length of use, and also fix the standard of prices by which the matter was to be determined.

Mr. WORTHINGTON. The witness says he knows and he can tell.

The PRESIDING OFFICER. The Chair was speaking of the frame of the question. The evidence sought to be elicited must necessarily be relieved from the charge of being too indefinite. It must specify the degree of use, after which would follow the condition of the machinery, with reference to a standard price at a future time.

Q. (By Mr. WORTHINGTON.) Would the value of that scraper line depend on the way it was used and the extent it had been used at all?—A. Yes, sir; it would. We use mine water, water that is high in sulphuric acid, and it eats the iron away in a short time. An ordinary scraper line would last about a year.

Q. How long would it take to work this Katydid dump in that way, building a scraper line and taking the culm down to the consolidated and putting it through your washery there?—A. It would take about a year; it might be a little longer. It is an awkward dump to get hold of.

Q. The scraper line would last about a year?—A. About a year.

Q. I have asked you about the cost of the equipment and so on. What would be the cost of operation per ton?—A. To pick up the Katydid dump in my judgment would cost 50 cents a ton.

Q. What do you mean, coal or culm?—A. Of prepared coal.

Mr. WORTHINGTON. That is all, Mr. President.

Cross-examination:

Q. (By Mr. Manager STERLING.) What is your first name, Mr. Jennings?—A. Joseph.

Q. Are you connected with the Hillside Coal & Iron Co. now?—A. I am.

Q. In what capacity?—A. I am general inspector of mining.

Q. How long have you had that position?—A. Since February 1, 1912.

Q. You are not an engineer, are you?—A. I am.

Q. A mining engineer?—A. I am.

Q. How long have you followed that business?—A. I worked on the engineering corps back in 1899, and in 1900 I went to Lafayette College, at Easton, and took an engineering course and graduated in 1904.

Q. You have not held any position as a mining engineer, have you?—A. Not what you would mean by mining engineer.

Q. I mean just what I say. You have not had the position of mining engineer of any coal company or railroad company?—A. No, sir; not the exact position.

Q. You know what report Mr. Johnson made of the amount of chestnut coal in this dump, did you not?—A. I saw it. I did not pay much attention.

Q. It is one-half of 1 per cent, is it not?—A. Something like that.

Q. So the question as to whether or not the chestnut coal should be won would not affect the value of the dump very much one way or the other, would it?—A. The chestnut coal?

Q. Yes, sir; if it is only one-half of 1 per cent?—A. It would affect it just that much.

Q. You say you had a talk with Mr. May about the advisability of selling this—A. Yes, sir.

Q. And you told him that one reason for selling it was the instability of the agreement which you had?—A. Yes, sir.

Q. What did you mean by that?—A. We were operating on lot 46; we owned a one-half undivided interest, and there was no lease. There was just the letter that was given a long time ago, and we did not know when that agreement would be changed.

Q. And the effect of it was that it affected the title to the dump. Is that your idea?—A. I do not know. I am not lawyer enough to know just how to put that, but I always understood——

Q. When you were——

Mr. WORTHINGTON. I submit that the witness be allowed to finish.

Mr. Manager STERLING. He has answered.

Mr. WORTHINGTON. He said he understood and was cut off.

The PRESIDING OFFICER. The witness before he finishes will be allowed to make any explanation he wishes.

Mr. WORTHINGTON. He started to make an explanation, but was cut off, and I submit that he ought to be permitted to finish his answer.

The PRESIDING OFFICER. The witness will finish his answer and state what he understood.

The WITNESS. I always understood that our right to work lot 46 was liable to be terminated at any time.

Q. (By Mr. Manager STERLING.) Dependent upon this agreement with the Everhart heirs? That is your idea?—A. Yes, sir.

Q. So it did affect the title in that way?—A. I do not know what the title was.

Q. So the principal reason you gave May for selling it was the very reason May gave here for not selling it, is it not?

Mr. WORTHINGTON. I submit this witness is not to criticize Capt. May upon a question of argument.

Mr. Manager STERLING. I am not undertaking to criticize Capt. May. It will be remembered that Capt. May testified that when the notice came in he thought the title might be a question.

Mr. WORTHINGTON. In due time we can read Capt. May's statement and contrast his testimony with that of this witness.

Q. (By Mr. Manager STERLING.) I will put the question in this form. I am sure I can satisfy my friend here. The reason why you advised him to sell it was because you thought there were questions about the title. Is that it?—A. No; not exactly that. We knew that the arrangement we were working under could be changed and easily changed. That was the reason, it could be easily changed.

Q. You thought you wanted to get rid of it for that reason?—A. Not only that, but it would affect a number——

Mr. Manager STERLING. I am talking about this one.

Mr. WORTHINGTON. The witness was interrupted again in the midst of his sentence. I submit he has a right to finish it.

Mr. Manager STERLING. If we do not confine the witness to the questions he will be on the stand the whole afternoon.

The PRESIDING OFFICER. The manager has a right to confine the witness as nearly as he can to answer the question, and then it is fully competent for the counsel for the respondent to bring out all that the counsel thinks important to have his testimony thoroughly understood. The managers have the right to confine their examination within certain lines so far as answers to their questions are concerned.

Mr. WORTHINGTON. We make no question about that, but I contend that the witness was properly answering the question and was interrupted while in the middle of it just as before.

The PRESIDING OFFICER. The witness will answer the question as directly as possible. There will be every opportunity to explain everything.

Mr. Manager STERLING. Let the Reporter read the question and answer.

The question and answer were read by the Reporter.

Q. (By Mr. Manager STERLING.) Was that one of the reasons you recommended to Mr. May to sell this dump?—A. Yes, sir.

Mr. Manager STERLING. Take the witness.

Mr. WORTHINGTON. That is all, Mr. Jennings. We will have to detain you and have you send for that notebook of Mr. Merriman's.

The WITNESS. The notebook and the little map?

Mr. WORTHINGTON. Yes.

Mr. Manager STERLING. One question I forgot to ask Mr. Robertson. I ask that he may be recalled.

TESTIMONY OF JOHN M. ROBERTSON—RECALLED.

John M. Robertson recalled.

Q. (By Mr. Manager STERLING.) Mr. Robertson, you saw the report of the engineer of the Hillside Coal & Iron Co. as to the number of tons of material in this dump, did you not?—A. I do not remember that I ever saw the report; I knew of it.

Q. Well, you testified before the Judiciary Committee, did you not, that——

Mr. WORTHINGTON. From what page does the manager read?

Mr. Manager STERLING. From page 830. [To the witness:] You testified as follows:

Mr. ROBERTSON. The Hillside Coal & Iron Co. put their engineers on the dump, measured it, and found that it contained 80,000 gross tons of material—that is, culm—composed of fine dust and the various sizes running up—probably there might be a little up to pea. There might be some little chestnut.

You swore to that before the Judiciary Committee, did you not?—A. Yes, sir.

Q. And that is true, is it not?—A. That is true to the best of my knowledge.

Q. Mr. Robertson, if there were 80,000 gross tons of material in the dump and 59 per cent of it was coal, as testified by Mr. Johnson, then it is a simple question of mathematics to determine how much coal there was in the dump, is it not?—A. Yes, sir.

Q. It would be a little over 47,000 tons of coal, would it not?—A. That is right; yes, sir.

Mr. Manager STERLING. That is all.

Mr. WORTHINGTON. That is all, Mr. Robertson.

TESTIMONY OF J. BUTLER WOODWARD.

J. Butler Woodward, being duly sworn, was examined and testified as follows:

Q. (By Mr. SIMPSON.) Mr. Woodward, what is your business?—A. I am a lawyer.

Q. You are a member of what firm?—A. Of Wheaton, Darling & Woodward.

Q. How long have you been a lawyer?—A. I have been practicing for 25 years.

Q. What is your politics?—A. I am a Democrat.

Q. Were you a jury commissioner in the middle district of Pennsylvania?—A. I was.

Q. Appointed by whom?—A. By Judge Archbald.

Q. When?—A. When the middle district was first formed. I think it was in 1901.

Q. You continued as such jury commissioner until when?—A. Until Judge Archbald went on the Commerce Court, until he went off the district court bench, when I handed in my resignation to his successor, Judge Witmer.

Q. Did you continue any time after that?—A. Yes, sir. He asked me to continue, and I continued some time after that.

Q. Will you tell the Senate, please, what are the duties of a jury commissioner?—A. The jury commissioner and the clerk fill the wheel, and the marshal draws the names of jurors from the wheel. When we first started in we put in 300 names, equally divided between us, as required by law. To get my share of the names, I wrote to either the judge or some lawyer, whose name I got from a lawyer's list in each of the 32 counties composing the district. From those lists the names were copied in a book. We each had a book. He was in Scranton; I was in Wilkes-Barre. In that book was the name, occupation, and address of each juror. A slip was torn off, with the number on the slip, containing the name of the juror and the number that was put in the box. Then, whenever a jury was drawn, it required 63 names, 23 for the grand jury and 40 for the petit jury. Before the marshal drew, the clerk and I would each put in half of the 63 names, or divide the 63 names between us. Sometimes I would take 31 names, and sometimes 32, and put those in the wheel before we drew out. Then an equal number were drawn out by the marshal. If the name and number appeared in my book, it was checked off of my book, and if it appeared in his book it was checked off of his book. Those names I got from the judges and from the lawyers. The judges and the lawyers were unknown to me, and the names were of people whom I knew nothing about. I would give the list to the stenographer; he would enter it in the book, and when we went into Scranton to draw the jury they would be drawn in that way.

Q. Then, if I get it straight—I want in as few words as possible to fix it—there were originally 300 names put in, and then each time of the drawing 63 additional names were put in and 63 taken out, leaving always 300 names in the wheel?—A. Yes, sir.

Q. What kind of a wheel was it? Just very briefly describe it.—A. It was a sort of tin octagonal arrangement, about that long [indicating].

Mr. Manager NORRIS. Mr. President, I think we had better not ask this witness that question. He is only stating what the law is in regard to the selection of a jury.

Mr. SIMPSON. No; he was going further. The allegation here, Mr. President, is that Judge Archbald is guilty of a high crime or misdemeanor in that he appointed this gentleman as a jury commission, who was counsel for a railroad company ostensibly—for we could not get any other thought out of it—because this gentleman would, in some way or other, use his influence by reason of having been counsel for a railroad company to pack that wheel for the benefit of the railroad company or companies for which he was counsel, and I propose to show——

Mr. Manager NORRIS. Mr. President——

Mr. SIMPSON. Excuse me a moment, Mr. NORRIS. I propose to show just exactly what he did; to show that it was impossible—and following it up by later questions—for the thing, by innuendo charged here, to have occurred.

Mr. Manager NORRIS. Mr. President——

Mr. CRAWFORD. I should like to propose a question to the witness.

The PRESIDING OFFICER. Does it relate to the question of the admissibility of this evidence?

Mr. CRAWFORD. Not to the admissibility of the evidence, but it relates to this subject.

The PRESIDING OFFICER. Until this is disposed of——

Mr. SIMPSON. The question here is simply how to describe a wheel. That is the question that is now before the Senate.

Mr. Manager NORRIS. Mr. President, if the questions would have a tendency to elicit from the witness anything that is material on this particular account there would be no objection. The argument that counsel makes in reality has nothing whatever to do any more than his question has with the point at issue in this particular article. The witness has been asked to describe a wheel. There has been no charge that that wheel or that method of selecting a jury is contrary to law or that it selected any jurors contrary to law. This testimony is only taking up the time of the Senate, as I look at it; it can hurt nobody; it can do no one any good. So far as having anything to do with the selection of the names, the witness has already told how he selected them. If there is anything wrong in the selection of any particular man as a juror it would come in in that way and not in the wheel. We have not charged that when the men's names were put in the wheel there was any manipulation of that wheel or that there was a possibilty of manipulating it.

Mr. SIMPSON. Under the disclaimer of Judge NORRIS I will withdraw that question, sir. Does the President desire to submit the question which the Senator from South Dakota desires propounded to the witness before I proceed?

The PRESIDING OFFICER. The Senator from South Dakota desires to propound a question, which will be read to the witness.

The Secretary read as follows:

It would be possible, would it not, for a jury commissioner to gather names of jurymen who were biased in favor of railway companies?

The WITNESS. Not to any great extent in 32 counties. The jury commissioner would have to have a rather large acquaintance to get jurymen biased in favor of railroad companies.

Q. (By Mr. SIMPSON.) Was there any gathering of names of jurors at any time you were acting as jury commissioner who were biased in favor of railroad companies?—A. Not to my knowledge.

Q. There was none by you?—A. There was none by me.

Q. Did you know any of the names of the jurors that you put in the wheel?—A. I did some that I put in from my own county.

Q. Were any of them connected with or biased in favor of railroad companies?—A. Well, I do not recall any now.

Q. Would you have put any such names in the wheel if you had known them to be so?—A. I do not think I should. The charge is that I was appointed jury commissioner while general attorney for the Lehigh Valley Railroad Co.

Q. Yes; I was coming to that in a moment. You can go on and explain it in your own way.—A. I was not general attorney for the Lehigh Valley Railroad Co. I was local counsel for the Lehigh Valley Railroad Co. I never had a case for them in the United States court, and I would not have tried the case if they had had any there. They would have had their local counsel in Scranton or Wilkes-Barre, wherever the court sat. The court did not sit at Wilkes-Barre. I never had but two cases in the United States court—one was a jury trial, and in the other case we agreed to withdraw it from the jury and to try it before a board of engineers, because it involved technical questions.

Mr. CRAWFORD. Mr. President, I desire to submit another question.

The PRESIDING OFFICER. The Senator from South Dakota submits a question, which will be read by the Secretary.

The Secretary read the question, as follows:

Q. If he set about it with the intention to select that class of men as jurors who would be biased in favor of railway companies, it would be possible for him to do so, would it not?

The WITNESS. As I said before, it would be possible to get some names of people who were biased in favor of railroad companies, but if you get the representation from 32 counties that they were entitled to, and which they got, it would be difficult to get a large representation biased in favor of railroad companies.

Mr. CRAWFORD. Mr. President, I submit that that is not a full answer to the question. I think, if the witness will listen to the question carefully, he will see that it is capable of a more direct answer.

The PRESIDING OFFICER. The question will be submitted to the witness. He will read the question and endeavor to answer directly.

The WITNESS (after reading the question). Yes; I should think it would.

Q. (By Mr. SIMPSON.) You spoke of having had two cases in the United States court. That covered what period of years?—A. Well, I have been practicing 25 years, and those are the only two I ever had.

Q. Covering the whole period of 25 years?—A. Yes, sir.

Mr. KENYON. Mr. President, I would like to submit a question.

The PRESIDING OFFICER. The Senator from Iowa submits a question, which will be read to the witness by the Secretary.

The Secretary read as follows:

Did you get any names for jurors from any local attorneys of railroads in the various counties?

The WITNESS. I had no knowledge of any. They may have been attorneys for railroads. I took them from a list published in New York, called the Lawyers List. Those that I did not get from the judges of the county I got from some lawyer whose name appeared on that list. The lawyers were unknown to me and the judges were unknown to me. Whether they represented any corporation or not, I do not know. I asked them to send me names of good men for the United States jury, and whether they represented corporations or not I do not know.

Mr. CRAWFORD. I desire to present another question.

The PRESIDING OFFICER. The Senator from South Dakota submits a question, which will be read by the Secretary.

The Secretary read as follows:

The railway companies had local attorneys in each of the counties in the district, did they not?

The WITNESS. I do not know.

Q. (By Mr. SIMPSON.) There was one case you said you tried. What became of that case?—A. There was one case tried for the Lehigh Valley Coal Co., in which I was associated in the trial, but it was withdrawn from the jury and submitted to a board of arbitrators composed of three engineers. It involved mining questions.

Q. That was the end of the case, so far as the court was concerned?—A. Yes; that was the end of the case, so far as the court was concerned. The first time we tried it the counsel for the plaintiff labored for several days to make out a case and failed, and we thought we were entitled to a nonsuit. Judge Archbald allowed the jury to be withdrawn and the case continued, so that they might prepare their case in a way that it might be presentable.

Q. Do you remember the purse which was made up at the time Judge Archbald was going to Europe?—A. Yes, sir; I might say——

Mr. REED. Mr. President, I desire to submit a question to the witness.

The PRESIDING OFFICER. The Senator from Missouri submits a question, which will be read by the Secretary.

The Secretary read as follows:

Q. Did you think it proper to permit lawyers who might have cases to try before a jury to recommend and thus practically select the jurors?

The WITNESS. I did. The question is whether I thought it proper, is it not?

The PRESIDING OFFICER (to the witness). You may read the question.

The WITNESS (after reading the question). Yes, sir; I thought it was proper.

Mr. JOHNSTON of Alabama. Mr. President, I desire to submit a question.

The PRESIDING OFFICER. The Senator from Alabama submits a question, which will be read by the Secretary.

The Secretary read as follows:

Q. Did you apply to Democratic or Republican lawyers to furnish you names of jurors in the various counties?

The WITNESS. I knew nothing about their politics, whether they were Democratic or Republican lawyers. I had no knowledge of them, except that this was supposed to the best list of lawyers that was published, and I took the names from a book. I might say that the office of jury commissioner in all the United States courts of Pennsylvania was at that time, until I resigned, held by lawyers.

Q. (By Mr. SIMPSON.) And do you happen to know whether or not the names of jurors were selected to be put in the wheel in other districts in the same way that you did?—A. I have no knowledge of how it was done in other districts.

Q. Coming, then, to the question that I started to ask you about, you were a contributor to the purse that was given to Judge Archbald when he went to Europe?—A. Yes, sir; I contributed to that purse. I had nothing to do with getting it up, as charged in the twelfth—I think it is the twelfth—article. I did no soliciting for it and I had nothing to do with its presentation. I was asked over the telephone by Mr. Searle to contribute, and I said I would. He told me that Judge Wheaton and John T. Lenahan were also willing to contribute, or had said they would contribute. I spoke to Mr. Wheaton, who occupies the next office, who said that he had been spoken to by Mr. Searle. There was an interval then before I heard anything more about it. Then I got another telephone message from Mr. Searle, asking me to send my check and Judge Wheaton's check and Mr. Lenahan's check. I got Judge Wheaton's check and telephoned to Mr. Lenahan to send me his check. He did so, and I forwarded it to Mr. Searle.

Q. Is that all the connection you had with the matter?—A. That is all the connection I had with it from the first.

Q. How long had you known Judge Archbald?—A. I should think for 25 years or more, or before that. I think we graduated at the same college; but he was before my time.

Q. Has the acquaintance been merely the acquaintance of lawyer and judge, or more than that?—A. I never had but those two cases before him. It has been made a social acquaintance. I have met him at college dinners and at various times.

Q. And that acquaintance of that character has been continued during the whole of this time you have mentioned—25 years or so?—A. Yes, sir. I can not tell exactly when I met him.

Mr. REED. Mr. President, I desire to submit a question.

The PRESIDING OFFICER. The Senator from Missouri submits a question, which will be read by the Secretary.

The Secretary read as follows:

Q. If you did not represent the railway company in court, what did your employment embrace?

The WITNESS. My employment by the railway company? I did represent them in the court of Luzerne County; tried their cases there, and did other business. I had no retainer from them and I had no salary. I transacted whatever business came to the office and sent them a bill, the same as I did to other clients.

Mr. SIMPSON. I think that is all, Mr. President.

Cross-examination:

Q. (By Mr. Manager NORRIS.) Mr. Woodward, what was the amount you contributed to this fund?—A. $50.

Q. When Mr. Searle telephoned to you, did he name any amount?—A. I think not; I have no recollection that he did.

Q. Do you remember the amount of the other contributions that you forwarded to Mr. Searle?—A. Yes, sir.

Q. What were they?—A. Judge Wheaton $50 and J. T. Lenahan $25.

Q. So you remitted $125 to Mr. Searle?—A. Yes, sir.

Q. Did you get any acknowledgment?—A. Yes, sir; I heard from Judge Archbald. I do not know where the letter was dated, but afterwards I got a letter from Judge Archbald. That was the first I knew that the names of the contributors had been disclosed to Judge Archbald. I take it there was no impropriety——

Q. Have you that letter?

Mr. WORTHINGTON. Let him finish his previous answer.

A. I do not know, sir; I may have it in my office at home. I made no search for it. I do not know whether I can find it or not.

Q. Mr. Worthington has suggested that I interrupted you in your answer. If you were not through, please finish it now.—A. I was about to say that there would have been no impropriety about the gift of the purse, or it would not have placed Judge Archbald in an embarrassing position, if the names of the contributors had not been disclosed.

Q. That, as a matter of course, those who have to pass on it will have to judge, I presume. The fact is, your name was disclosed to him?—A. I believe so; yes, sir. I did not know it until——

Q. Otherwise, you would not have been able to get an answer from him?—A. Yes, sir; I knew when I got an answer from him that the names——

Q. I was asking you about that letter. Can you produce the letter that you got from Judge Archbald?—A. I said I may be able to produce it. I do not know. I will have to search through my files.

Q. Have you made any effort to get it?—A. I have not.

Q. When did Judge Archbald appoint you as jury commissioner?—A. Just after the middle district was formed.

Q. That is, when he first went on the bench?—A. Yes. He asked me if I would take the position as jury commissioner of his court. He made a rather personal matter of it, and I said that I would. He said it would not take much time, and I thought I could give that time to the service. I considered the office of jury commissioner an important office in the adminis-

tration of justice and an office that in our counties there in Pennsylvania has been very much neglected.

Q. As a matter of fact, what was the salary connected with the office?—A. Five dollars a day for every day employed.

Q. And about how many days in the year would you be employed to attend to the official duties?—A. I would make about fifty or sixty dollars a year.

Q. So that you did not accept it principally on account of the financial consideration?—A. No, sir.

Q. What salary did you get as railroad attorney?—A. I got no salary at all as railroad attorney.

Q. Were you attorney for the Lehigh Valley Railroad Co. at the time you were appointed jury commissioner?—A. I was.

The PRESIDING OFFICER. The Senator from Missouri [Mr. REED] submits a question that will be propounded to the witness, if the manager will suspend a moment.

The Secretary read as follows:

State fully in what courts you represented the railway company.

The WITNESS. The courts of Luzerne County, Pa., and in the appellate courts of Pennsylvania, where appeals were taken from the Luzerne County courts.

The PRESIDING OFFICER. The Senator from Missouri submits another question, as follows:

The Secretary read as follows:

Did you so represent the company during all the time you were jury commissioner?

The WITNESS. Yes, sir.

The PRESIDING OFFICER. The Senator from Iowa [Mr. KENYON] submits a question which will be propounded to the witness.

The Secretary read as follows:

Q. Did you have railroad passes while you were jury commissioner?

The WITNESS. Yes, sir; on the Lehigh Valley.

The PRESIDING OFFICER. The manager will proceed with his examination.

Q. (By Mr. Manager NORRIS.) You had partners all the time, Mr. Woodward, did you not?—A. Yes, sir.

Q. Who were the other members of your firm?—A. At present?

Q. No; at the time of this appointment.—A. I think Judge Wheaton went on the bench in 1901 and came back to practice in 1907. While he was out of the firm I had Mr. James L. Morris and my father, Judge Woodward.

Q. Was you father connected as an attorney with any railroad company?—A. When he was in the firm of Woodward, Darling & Woodward, he was.

Q. For what company was he attorney?—A. The Lehigh Valley Railroad Co.

Q. This same company?—A. Yes, sir.

Q. Was he their general attorney?—A. No, sir.

Q. He was, like you, paid for the business that was turned over to him in accordance with the terms of employment?—A. When I spoke of representing the company I meant our firm represented it.

Q. Your other partner was Judge Wheaton, I believe?—A. Yes.

Q. Was he attorney for some railroad company when he was in that firm?—A. Yes, sir.

Q. What railroad company was he attorney for?—A. The same—the Lehigh Valley Co. He was when he was a member of the firm, and he has since become the attorney for the Pennsylvania Railroad Co., since Hon. Henry W. Palmer——

Q. What other men were members of your firm?—A. Thomas Darling.

Q. He is a member now?—A. Yes.

Q. Was he a member during the time or a portion of the time you were serving as jury commissioner?—A. Yes, sir.

Q. He was a member of your firm then?—A. He was.

Q. Did he represent any railroad company?—A. Only as a member of the firm.

Q. I suppose, yes; as attorney.—A. As I said, the firm represented the Lehigh Valley Railroad Co.

Q. Did he represent any other railroad company?—A. I think not.

Q. In the actual trial of the cases, when you say you only had two cases, do you mean the firm only had two?—A. Yes; I think that was all the firm had.

Q. But you were not the general attorney, you say?—A. No, sir.

Q. It was your business to try any lawsuits that occurred in Luzerne County?—A. Yes, sir.

Q. And when they went up to any other court you followed them, did you?—A. In our appeal courts in the State of Pennsylvania; yes, sir.

Q. Clear through to the supreme court, if they went that far?—A. Yes, sir.

Q. If they went into the Federal court, did you follow them there?—A. I suppose I would have done so. I never knew one to go into a Federal court; that is, if they had started in Luzerne County, I suppose I would have followed them into the Federal court.

Q. This judicial district consisted of 32 counties, did it not?—A. I believe so.

Q. This Lehigh Valley Railroad had branches and lines in practically all of those counties?—A. No, sir.

Q. Well, in a large portion of them?—A. No, sir.

Q. Well, how many of them?—A. Luzerne, Bradford, Susquehanna, Carbon. Those are all I can think of.

Q. Hoy many was that?—A. Carbon, Luzerne, Susquehanna, Bradford, and possibly some others. Those are all I can think of now.

Q. As a matter of fact, in every one of those counties the Lehigh Valley Railroad had a local attorney?—A. Yes, sir.

Q. The same as they had in Luzerne County, where you represented them, did they not?—A. Yes, sir.

Q. Tell us again what was that book from which you selected the names?—A. It was a book in which was entered from these lists the name, address, and occupation of the juror. Then there was a perforated slip on the other side containing the name and the number; the number also in this stub.

Q. Did you use that list exclusively in selecting lawyers' names to make inquiry about the jurymen?—A. That lawyers list I spoke of, that book?

Q. Yes.—A. Yes; I think so. There may have been one or two counties where I had personal acquaintance with some lawyer.

Q. I was speaking of the lawyers list.—A. Yes, sir.

Q. That you used in selecting a lawyer to whom to write to give you a list of jurors?—A. I understand.

Q. Is it not true, Mr. Woodward, that in most of these counties you were personally acquainted with the members of the bar?—A. No, sir.

Q. Were you personally acquainted with the members of the bar in Susquehanna County, for instance?—A. No, sir. I knew a few, one or two, two or three, perhaps.

Q. And in Bradford County?—A. I know possibly three or four in Bradford County.

Q. And in Carbon County?—A. In Carbon I know two or three.

Q. As a matter of fact, you knew the name of the railroad attorney of this company in every one of the counties where it had a railroad attorney, did you not?—A. Yes; I think I did.

The PRESIDING OFFICER. The Senator from South Dakota [Mr. CRAWFORD] submits a question which will be propounded the witness.

The Secretary read as follows:

Q. During the time that you were jury commissioner did the law firm of which you were a member act as counsel for mining or railway or other corporations which had or were likely to have cases pending in the Federal court of that district?

The WITNESS. No, sir. The corporations that I represented were Pennsylvania corporations. They very seldom got into the United States court, because the suits we had to do with largely were by citizens of Pennsylvania, and there was no diversity of citizenship.

The PRESIDING OFFICER. The Senator from Nebraska [Mr. HITCHCOCK] wishes to propound a question which the Secretary will read.

The Secretary read as follows:

How many cases involving the Lehigh Valley Co. were pending or to be tried by jury during the time you selected the jurors?

The WITNESS. As I say, there was none for the Lehigh Valley Co. that our office had anything to do with. One that concerned the Lehigh Valley Coal Co. I understand there were two or three other cases during that time in the United States court which the counsel in Scranton had charge of that I knew nothing about. I never heard of them at all.

Q. (By Mr. Manager NORRIS.) As a matter of fact, though, in those cases with which you had nothing to do as attorney, you had selected the list or one-half the list from which the jury had been picked?—A. Yes; all the jurors——

Q. You selected one-half the names?—A. I did not select the names for the jury. I put the names in the wheel.

Q. That is what I mean, you selected one-half the names that were put in the wheel?—A. Yes, sir.

Q. For all juries that were drawn anywhere in Judge Archbald's court?—A. Yes, sir.

Q. And it would have been impossible to have had a name on the regular panel unless either you or the clerk had selected that name. Is not that true?—A. That is correct.

The PRESIDING OFFICER. The Senator from New Hampshire [Mr. GALLINGER] wishes to propound a question.

The Secretary read as follows:

Q. In calling on attorneys for lists of names did you select railroad attorneys in preference to others?

The WITNESS. No, sir; I had no knowledge whether they were railroad attorneys or not. I had no acquaintance with them and did not know what kind of attorneys they were except they appeared in this list.

Q. (By Mr. Manager NORRIS.) You did know the railroad attorneys in these four counties?—A. Yes; I did.

Q. So, in selecting attorneys there you did know whether they were railroad attorneys or not?—A. I do not know that I selected attorneys that were railroad attorneys. I do not remember.

Q. You do not remember as to that?—A. No, sir. I think I got their names also from this list.

The PRESIDING OFFICER. The Senator from Iowa [Mr. KENYON] propounds the following question.

The Secretary read as follows:

A. Was the claim agent of the Erie Railroad or of the Lehigh Valley Railroad, or any of their assistants, intimate friends of yours during the time you were jury commissioner?

The WITNESS. No, sir. I do not know who they were.

Q. (By Mr. Manager NORRIS.) Mr. Woodward, can you furnish us with the names of attorneys to whom you wrote in these different counties for, let us say, the last five years?—A. I think I can. I am not sure.

Q. Have you the list with you?—A. No, sir. I can furnish you a list of the names that were put in the jury wheel. I turned them over to my successor. I can get them for you.

Q. That is the list of the names of the men that were put in the wheel?—A. Yes.

Q. I do not care for that. I am inquiring about the names of the men——A. I understand.

Q. To whom you wrote to get these lists.—A. I am not sure. I think, though, that I probably have copies or that they will appear on the address book, perhaps. I am not sure about that. I would have to look it up.

Q. Can you give us the name of any lawyer in Susquehanna County to whom you wrote to get a list of names?—A. No, sir; I can not.

Q. Can you give us the name of a lawyer in Bradford County?—A. No, sir. I think I wrote to the judge in Bradford County. I am not sure.

Q. You wrote a good many different times to that county, did you not?—A. Yes.

Q. How many years were you performing this duty?—A. From 1901 until Judge Archbald went off the bench. I think that was in 1910.

Q. You did not get any pay even for writing these letters and getting these names?—A. That was included in the $5 a day.

Q. Writing these letters was a part of the time and you were working for $5 a day?—A. Yes, sir.

Mr. Manager NORRIS. I think that is all, Mr. President.

The PRESIDING OFFICER. The Senator from Missouri [Mr. REED] presents the following question, which will be propounded to the witness.

The Secretary read as follows:

Q. Do you want it to be understood that you discharged your duties as jury commissioner by permitting lawyers about whom you knew nothing except that you found their names printed in a lawyers' list to make the selections for you?

The WITNESS. Yes; that is a fact.

Mr. REED. Here is one more question, Mr. President.

The PRESIDING OFFICER. The Senator from Missouri presents a further question to be propounded to the witness.

The Secretary read as follows:

Q. What guarantee, then, did you have that those who made the selection were men of character or that they had selected good men for jurors?

The WITNESS. Only the guarantee of this lawyers' list, which war formerly gotten out by the firm of Potter, Hughes & Dwight, of New York, who got it out purely as a list of responsible lawyers. As I understood, they got nothing for making the list or distributing it. Afterwards Potter, Hughes & Dwight severed their connection with it, or gave it up, and it was continued as this lawyers' list, and then I think we paid $25 a year for it. We have several lawyers' lists in the office, but that was the most reliable and the best lawyers' list, the list on which the most reputable lawyers' names appeared.

Redirect examination:

Q. (By Mr. SIMPSON.) Mr. Woodward, you were asked whether or not the salary of this office was the principal reason for your accepting it and you told us no. Tell us, please, what was the principal reason for your accepting it.—A. Well, it was Judge Archbald asking me in a way, he put it on personal grounds. That was one of the reasons. Another reason was he said it would not take much time, and I was willing to give that much time to the service.

Q. What service do you mean?—A. The service of getting good jurors for the United States.

Q. So far as you can now recall, did you ever send to get any names of jurors from any of the local counsel for the Lehigh Valley Railroad in the other counties?—A. I may have; I do not recall now; but I think I got their names from this lawyers' list, as well as the other names, except possibly where I would get the names from the judges.

Q. Tell us, please, whether during all the time you were jury commissioner there were ever any complaints made of the jurors thus selected.—A. I never heard of any.

Q. Did you know at the time you made the contribution to the purse that was given to Judge Archbald when he went to Europe that the names of the contributors were to be disclosed?—A. I did not.

Recross-examination.

Q. (By Mr. Manager NORRIS.) Do you know they were not going to be disclosed?—A. No, sir; I did not know.

Q. You did not have any idea on that subject?—A. No, sir.

Q. You had received no information along that line?—A. No, sir.

Mr. Manager NORRIS. That is all.

Mr. SIMPSON. That is all. The witness may be discharged so far as we are concerned.

Mr. Manager CLAYTON. We do not desire him further.

The PRESIDING OFFICER. The witness may be discharged finally.

TESTIMONY OF J. B. DIMMICK.

J. B. Dimmick appeared and having been duly sworn was examined and testified as follows:

Q. (By Mr. SIMPSON.) What is your business, Mr. Dimmick?—A. I am in banking and manufacturing.

Q. Were you a member of the bar?—A. I was, and I am.

Q. How long has it been since you practiced at the bar at all?—A. It must be fully 25 years.

Q. You were in what official capacity in the city of Scranton?—A. I was mayor for three years.

Q. Elected on the reform ticket, I think?—A. Assuming that is synonymous with the Republican ticket, yes.

Q. Do you know Judge Archbald?—A. I have known him ever since I resided in Scranton.

Q. Did you and he go to the same college?—A. We did.

Q. What college was it?—A. Yale University.

Q. What was your relation to him outside of that?—A. I have been a personal friend of Judge Archbald and have known him intimately for fully 30 or 32 years.

Q. Did you contribute to the purse which was given to him at the time he went to Europe?—A. I did, believing that the motives behind it were purely personal rather than professional, and that belief was confirmed by the fact that I was included in the list, although I was not and had not been for many years practicing at the bar.

Q. At whose request did you make the contribution?—A. I think it was Mr. Searle.

Q. What was the amount that you contributed?—A. I am a little uncertain about that, but I think it was $50.

Q. Did you know whether or not the names of the contributors were to be disclosed to him at the time you made your contribution?—A. I did not.

Q. Did you get an acknowledgment from him afterwards?—A. I did.

Q. Written from where?—A. Written from the steamer.

Q. That was therefore some time after he had sailed?—A. I did not receive it for some weeks, because I was abroad myself. We were not in touch, but it came to me and was forwarded to me.

Mr. SIMPSON. That is all, sir, on our part.

Cross-examination:

Q. (By Mr. Manager NORRIS.) You live in Scranton, Mr. Dimmick?—A. I do, sir.

Q. How long did you practice law there?—A. Not over two or three years.

Q. What business are you engaged in now?—A. I am president of a trust company.

Q. It is a banking institution?—A. A banking institution.

Q. And doing business in Scranton?—A. Doing business in Scranton. I am president of a manufacturing company.

Q. What manufacturing company?—A. The Scranton Lace & Curtain Co.

Q. Doing business now in Scranton?—A. Yes, sir.

Q. You have been in that business and in the trust company ever since you retired from active practice?—A. Not at all. I retired from active practice owing to poor health. I lived abroad for about five years. Recovering it, when I came back I felt that I had lost too much time to compete with my competitors, so I drifted into affairs by degrees. I have been in the manufacturing business about 15 years.

Q. You have known Judge Archbald for many years?—A. Yes; since before I came to Scranton, which was 29 years ago.

Q. How much was your contribution to this fund?—A. To the best of my recollection it was $50.

Q. How did you happen to subscribe to it?—A. I was asked to join in the purse on the part of Judge Archbald's intimate friends, to be given to him in lieu of other steamer gifts. If I had not, I presume I probably would have sent him some fruit; I could not have sent him cigars, but something in that nature.

Q. Who made that request of you?—A. I think it was Mr. Searle.

Q. Did anybody else make a request of that kind of you?—A. I do not recall.

Q. Did you attend a meeting of men for the purpose of deciding what should be done?—A. I was communicated with either by letter or over the telephone personally.

Q. By Mr. Searle?—A. That is my recollection.

Q. Now, tell us what Mr. Searle said to you.—A. To the best of my recollection, he said that some of Judge Archbald's intimate friends were proposing to get up a purse to give to him upon this theory and upon this fact, that he had been asked to make a visit by a relative of his wife, Mr. Cannon, in Florence. It was known among Judge Archbald's intimate friends that he had never been abroad. I myself had frequently urged their going, even to taking the trouble of showing them how it could be done economically.

Q. I asked you about the communication from Mr. Searle, and you are telling what you said.—A. His communication, to go back, was to the effect that his intimate friends intended to raise a purse that would help him—permit of his traveling in addition to his visit at Florence.

Q. Now, you knew at that time that Mr. Cannon was furnishing the money for him to make this trip, did you?—A. Oh, no; I did not know.

Q. You did not know anything about it?—A. No, sir.

Q. Then were you mistaken just a moment ago in your description of what Mr. Searle had told you?—A. I said he was asked to make this visit to Mr. Cannon. I did not know at the time that Mr. Cannon urged it. I do not know that he paid his way over.

Q. Did Mr. Searle tell you how much he wanted you to pay?—A. I do not recollect whether he did.

Q. Then you understood when you contributed this amount that it was to be a cash contribution and to be turned over to the judge in cash?—A. I did.

Q. There was nothing said to you about raising this money for the purpose of getting a dinner for the judge, was there?—A. What do you mean about getting a dinner? I do not quite understand.

Q. Paying the expense of a dinner in his honor?—A. There is nothing I recall of that nature.

Mr. Manager NORRIS. That is all.

Mr. SIMPSON. That is all. The witness may be discharged so far as the respondent is concerned.

The PRESIDING OFFICER. The witness is discharged.

TESTIMONY OF J. BUTLER WOODWARD—RECALLED.

J. Butler Woodward, having been recalled, testified further, as follows:

Q. (By Mr. Manager NORRIS.) Mr. Woodward, I wanted to ask you to tell us, if you know, what Mr. Searle said when he asked you to make this contribution to the judge?—A. I can not——

Q. Just wait a moment, please. I wish to know if he said anything as to the purpose of the contribution?—A. Yes, sir; he said that Judge Archbald was going abroad and they were making up a purse for him.

Q. Did he say anything about giving a dinner or banquet in the judge's honor?—A. No; I think not. It was short.

Q. You understood that this money was to be contributed in cash to the judge, did you?—A. Yes, sir; in the form of a purse.

Mr. Manager NORRIS. That is all.

Mr. SIMPSON. That is all.

The WITNESS. I would like to qualify the answer that I made to the question whether it was possible to fill the wheel with jurors who were affiliated with railroads or favorable to them. I said yes; it was possible. It would be quite difficult and take a lot of time and be complicated, but I suppose it could be done. I think it was possible.

TESTIMONY OF THOMAS DARLING.

Thomas Darling appeared, and having been duly sworn was examined and testified as follows:

Q. (By Mr. SIMPSON.) What is your business or profession, Mr. Darling?—A. Lawyer.

Q. Where do you reside?—A. Wilkes-Barre, Pa.

Q. Do you remember receiving a letter from Judge Archbald August 3, 1911, introducing Mr. Edward J. Williams to you?—A. I believe it was at that date; yes, sir. I gave the letter to the Judiciary Committee and presume they have it.

Q. I show you, Mr. Darling, Exhibit No. 9 [presenting paper] in this proceeding. Is that the letter you received?—A. (Examining.) That is the letter; yes, sir.

Q. This letter, I notice, introduces Mr. Williams to you, who wishes to talk with you about a culm dump which you control. What culm dump was that?—A. That was the culm dump known as the Diamond dump, situated on the lands of the Hollenback Coal Co.

Q. Had any railroad company any connection whatsoever with that dump?—A. Not that I know of.

Q. What relation had you to the Hollenback Coal Co.?—A. I was attorney for the company, and also the secretary of the company.

Q. And had been for how long?—A. About 20 years.

Q. When Mr. Williams presented that letter to you, what occurred?—A. He wanted to lease that bank. It was quite a valuable bank, containing between two hundred and fifty and five hundred thousand tons of good coal. I told him that I could not do anything with him, because we had already leased the bank.

Q. How long preceding this time had you leased it?—A. I think it was about two years.

Q. Did you have any communication with Judge Archbald in relation to any other culm banks at any time?—A. None whatever.

Q. Did you have any communication from Judge Archbald in relation to this matter after the one that is referred to?—A. Not that I recall.

Q. How long have you known the judge?—A. About 25 years; perhaps more.

Q. In what way had you known him?—A. I knew him slightly at college, met him at our reunions since, and I have been entertained at his house in Scranton on one or two occasions. I think that is the extent.

Q. You mean that you were students in the same college?—A. Yes.

Q. In what college?—A. Yale.

Q. Is he older or younger than you?—A. He is a little bit older; not very much, I guess.

Q. Did you ever have any cases to try before him as judge?—A. I never had a case before him.

Q. Tell me, please, whether or not there was any lawsuit over this Hollenback culm dump in order to determine its title?—A. Yes, sir.

Q. With what person or company was it?—A. The Lehigh & Wilkes-Barre Coal Co.

Q. And that is connected with what railroad?—A. The Reading and the Jersey Central.

Q. The result of that litigation was what?—A. To establish the title of the culm dump. There was some question as to whether it belonged to the lessor, Hollenback, or the lessee, the Wilkes-Barre Coal Co.

Q. The decision was what?—A. In our favor.

Q. In favor of the Hollenback Coal Co.?—A. In favor of the Hollenback Coal Co.

Q. How long a time before you got this letter of August 3, 1911, was it that you had that litigation over the bank?—A. It must have been at least three or four years, because the lease of the bank was made at least two years prior to the date of that letter.

Mr. SIMPSON. I think that is all, sir.

The PRESIDING OFFICER. The witness is with the managers.

Cross-examination:

Q. (By Mr. Manager WEBB.) What railroad are you counsel for?—A. The Lehigh Valley is the only road I am counsel for.

Q. The firm is Wheaton, Darling & Woodward?—A. Yes, sir; Wheaton, Darling & Woodward.

Q. How long have you represented the railroad?—A. Twenty-four or twenty-five years. I do not recall exactly.

Q. You were the counsel for the Hollenback estate?—A. I was counsel for the Hollenback Coal Co., not the Hollenback estate.

Q. Was that the Diamond dump that Mr. Williams brought you a letter from the judge about?—A. I presume so; although

I can not swear to that, because I do not remember the dump he had in mind. But I presume that was the one he had in mind, as several people had been after it.

Q. Had you leased it to John W. Peale theretofore?—A. Yes.

Q. I presume that is the one. Did you ever have any correspondence with the judge later or before that time about the Hollenback estate or coal dump we speak of?—A. No correspondence or conversation.

Q. Nor conversation?—A. No, sir.

Q. Is this Exhibit 9 the only letter you ever received from him?—A. How is that?

Q. Exhibit 9, which has just been referred to, is the only letter you ever received from the judge about a culm dump?—A. I think it is the only letter I have ever received from the judge.

Q. This is dated Scranton, August 3. Was that 1911?—A. I do not recall. I presume so.

Mr. SIMPSON. Other evidence in the case shows it, Mr. WEBB.

Q. (By Mr. Manager WEBB.) I will ask you if you did not receive this letter from the judge also [producing paper]?—A. (Examining.) Yes.

Q. It is in the judge's handwriting?—A. Yes; I received that letter also. I was mistaken. There were two letters I received.

Q. You received two, then, about the culm dump?—A. I do not know whether that is about the culm dump or not. Let me see it again, please. This letter is asking a reference to the case which I had argued in the Supreme Court, but it has nothing to do with the culm pile whatever, any more than that.

Q. "Washington, February 27." What year was that?—A. I do not recall.

Q. You do not know how long ago it has been since you received that letter?—A. It was after the first letter, according to my recollection.

Mr. Manager WEBB. Will you read that letter, Mr. Secretary?

The PRESIDING OFFICER. The letter will be read.

The Secretary read as follows:

[U. S. S. Exhibit 95.]

UNITED STATES COMMERCE COURT,
Washington, February 27.

MY DEAR DARLING: I failed to get the other day the reference to the Hollenback culm dump case which I intended. Please send me at Scranton a memorandum of where it is to be found in the reports, at your leisure. I am here for a day's court and a couple of days of consultation, and shall be back at home by the end of the week.

Very truly, yours,

R. W. ARCHBALD.

Q. (By Mr. Manager WEBB.) He speaks of a conference or a conversation with you a few days prior to the writing of that letter. Was that about a culm dump?—A. No; it was about this lawsuit I had had.

Q. Why did the judge want to know anything about this lawsuit with reference to the Hollenback culm dump?—A. I really do not know what he did want.

Q. You do not know?—A. I have not the slightest idea. My idea was that he had it in mind as bearing on some other lawsuit he probably had in his hands. That would be natural and only——

Q. A lawsuit before his court?—A. I do not remember whether he had been appointed to the Commerce Court at that time or not.

Q. Exhibit 9 is dated August 3, 1911?—A. Yes.

Q. Exhibit 85 in the Senate here you say was written after August, 1911. So he is bound to have been on the Commerce Court bench at the time?—A. He probably wanted it in that connection.

Mr. WORTHINGTON. I submit that the witness ought not to be asked to guess.

The WITNESS. It is the only thing I can do, to guess.

Mr. Manager WEBB. I did not want to stop him from guessing. [To the witness.] You do not know why he wanted to know about the Hollenback culm dump and the reference in the case?—A. I do not.

Mr. Manager WEBB. I think that is all we want to ask this witness.

The PRESIDING OFFICER. The witness may retire.

TESTIMONY OF GEORGE RUSSELL.

George Russell, having been duly sworn, was examined and testified as follows:

Q. (By Mr. SIMPSON.) Mr. Russell, you were connected with the Honduras Mining Co.?—A. I had some connection with a Honduras mining company.

Q. And there was a subconcession which was held by Mr. Rissinger and those connected with him?—A. A sublease which was under a concession.

Q. It was testified that there was a visit made to Scranton, Pa., by you in relation to that matter. Do you remember that visit?—A. I do.

Q. Will you tell us, please, what the date of that visit was?—A. Probably about the middle of September, 1908, or possibly before that——

Q. That is, during the month of September, but about the middle and possibly before?—A. Or a little before; in the month of September, 1908.

Q. That is all we wished to ask—just simply to fix the date. How do you fix the date?—A. By receipt of a check from Mr. Rissinger on account of his investment in this mining concession which I received on September 28, 1908.

Q. Was there anything said about that time in relation to Judge Archbald taking an interest in this Honduras scheme?—A. I did not gather from the conversation that he had determined to go into the matter.

Mr. SIMPSON. That is all, sir.

Cross-examination:

Q. (By Mr. Manager STERLING.) How long had you known Mr. Rissinger?—A. Several years.

Q. And he was connected with you in this gold-mining scheme down in Honduras?—A. He was not. A friend of mine procured a concession in Honduras and brought it to my office in New York. I introduced him to Mr. Rissinger, who happened about that time to call on me on some business.

Q. Well, were you connected with the enterprise?—A. I was about to become connected with it.

Q. You went to Scranton, Pa., at the request of Rissinger, did you not?—A. I do not recall whether I went at the request of Mr. Rissinger or of Mr. Hamilton, the friend of mine who brought the business to me, and who had been negotiating with Mr. Rissinger.

Q. But you saw Rissinger there?—A. I saw him there.

Q. You had never met Judge Archbald before that, had you?—A. Never.

Q. And you were in Scranton on this matter of the Honduras gold mine, were you not?—A. I think at that time that was the matter I was there on.

Q. You had no other business there at that time?—A. Not that I recall.

Q. And Mr. Rissinger took you to Judge Archbald?—A. Yes.

Q. And introduced you?—A. He did.

Q. You think that was in September?—A. I know it was in September.

Q. How do you fix the date?—A. By the receipt of the check from Mr. Rissinger.

Q. Did Rissinger give you a check at that time?—A. He sent me a check which I received on September 28.

Q. On September 28 of what year?—A. 1908.

Q. For how much?—A. For $2,000.

Q. Do you know where he got that money?—A. No, sir.

Q. Do you not know that he never got that money until the 12th day of December, when he cashed Archbald's note?—A. No, sir; I know nothing about it.

Q. Where is the check?—A. The check went back to him in due course.

Q. Have you got any entries in your books in regard to the transaction?—A. I have got the check book here.

Q. Have you any entries there?—A. I have, but you will have to excuse me while I go and get the book.

Q. Did you enter the receipt of this $2,000 in any book?—A. In my check book as a deposit.

Q. Well, does that show the date of the deposit of the check from Rissinger?—A. Yes.

Q. Let us see it.

Mr. SIMPSON (to the witness). Where is the check book?—A. It is in one of the rooms out here.

Mr. SIMPSON. I presume, Mr. President, we can excuse the witness for a moment to go and get the check book.

(The witness retired from the Chamber and returned with a check book.)

Q. (By Mr. Manager STERLING.) Now, you have there the stubs of what you were using at that time as a check book?—A. Yes, sir.

Q. How did you come to enter this receipt of the $2,000 on the stub of your check book?—A. I deposited it as cash through my bank account.

Q. How?—A. It was deposited by me as cash through my bank account.

Q. You mean that your book simply shows that you deposited it in your bank?—A. Yes, sir.

Q. Did you not simply deposit the check you got from Rissinger in the bank?—A. That is what I spoke of.

Q. How did that appear on the stubs of your check book?—A. Because the money passed through my hands.

Q. Did you draw a check on it?—A. I drew checks on my bank account when disbursing that money later on.

Q. So what you have got there, then, is where you paid the money out?—A. Where I received the money and subsequently paid it out.

Q. (After examining the check book.) Mr. Russell, have you got memoranda on the back of your check stubs of any other entries where you had received money, except the Rissinger entry?—A. Nothing except that of Rissinger and that of Mr. Day, of Paterson, in this same matter.

Q. Do you say that Rissinger gave you a check for $2,000 when you were at Scranton?—A. No; he mailed it to me to my office at New York.

Q. How does that fix the time when you were up there, then?—A. Because it was before that about 10 days to two weeks.

Q. You are, then, fixing it by comparison?—A. Yes.

Q. You received a number of checks from Rissinger sending you money, did you not?—A. Yes.

Q. And this one that you have on that particular stub is dated September what?—A. September 28, 1908.

Q. You received another check from him in October, did you not?—A. Yes, sir.

Q. October 24, did you not?—A. On October 24; yes.

Q. That was for a thousand dollars?—A. For a thousand dollars; yes.

Q. And you received another check from him in December?—A. On October 26.

Q. That was for a thousand dollars?—A. That was for $500.

Q. When did you receive the next check from Rissinger?—A. That was the last.

Q. What is the date?—A. It was October 26, 1908.

Q. Might you not have received checks from him later than that and not have a memorandum of them?—A. No, sir.

Q. Did you not receive a check from him after the 12th of December for $2,000?—A. No, sir.

Q. There is no pretense, then, that this check for $2,000 in September was the Archbald money or the money realized on the Archbald note, is there?—A. I had no idea where it came from, except it came from Mr. Rissinger.

Q. You did not know whether it came from that note or whether it came from other stockholders?—A. I knew of no note.

Q. You did not know whether it came from any transaction with Judge Archbald or whether it came from money paid in by other stockholders?—A. No, sir. I only knew Mr. Rissinger in the case.

Q. Do you say now, as a matter of memory, that you never did receive a check from Rissinger in December?—A. I have no record of it. I am not depending on my memory; I am going on my record, and I have no record of it.

Q. Now, the record you have there is simply memoranda written on the back of your check stubs, is it not?—A. Yes, sir.

Q. Have you entered in the back of those check stubs all the receipts of money you got during the time you were using that book?—A. Yes; I have.

Q. Can you point to a single memorandum there that indicates where the money came from except in the case of Rissinger's money?—A. Yes, sir; November, 1908, proceeds of Hutchins Panama draft, $125.

Q. Well, that is one. Turn to some more.—A. T. M. H. loan, $75.

Q. That is two.—A. Frederick Neuberger and H. S. Day, $500 each.

Q. That is four; there are two in that memorandum.—A. Fidelity Casualty Co., $650; same, $100; Western Union Telegraph Co. refund, 40 cents; draft on Panama, $200——

Q. Does your memorandum show who that came from?—A. Which?

Q. The item you just read.—A. Yes, sir. It is Mr. Hutchins's draft on Panama. Hutchins is the man on whom I drew it.

Q. Go ahead.—A. B. B. Co. tolls—I do not recall what B. B. Co. stands for—$33.50

Q. You do not know what that means?—A. No, sir. J. D. Elwell, $100, January 5, 1909; T. M. Hamilton, Honduras settlement, $825; deposit, $750.

Q. What is the date of that?—A. January 15, 1909. Advanced on Honduras agreement by J. D. Elwell Co., January 19, 1909, $500.

Q. Run it down to the end of January.—A. February 26, 1909, W. W. Rissinger, $42.90. That was for professional services.

Q. That was from Rissinger?—A. For professional services.

Q. What kind of professional services?—A. I am a public accountant.

Q. That was paid to you for work you had done?—A. Yes, sir.

Q. That is far enough. Now, let us see what these other memoranda indicate. Here is $1,200.—A. That is the balance carried forward.

Q. Some of these figures are on the back of thi· memoranda. What do they indicate—receipts of money?—A. Nc; that is the balance, and here is the total [indicating].

Q. Do any of the items on the back of these stubs where there is no name mentioned indicate the receipt of money?—A. No, sir.

Q. Do the items that you have read show all the money that you received from September down to the last of February?—A. Yes, sir.

Q. All the money that you took in?—A. Yes, sir.

Q. And you say you did not get any from Rissinger after the 12th of December?—A. I did not.

Q. Well, do you know whether any of the money that you got was money from Archbald?—A. No, sir.

Q. Or whether it was to pay for stock which Judge Archbald took?—A. I knew nobody but W. W. Rissinger in the matter at all.

Q. You know who the subscribers were?—A. No, sir.

Q. None of them at all?—A. I knew nothing about them forming a company of their own. About that I knew nothing.

Q. You talked with Judge Archbald about this matter when you were up there?—A. I talked with Judge Archbald once or twice in Scranton.

Q. Was Rissinger there then?—A. Yes, sir.

Q. And you explained to him the purpose of this organization?—A. Of which organization?

Q. That they were getting up there to mine gold down in Honduras?—A. That Mr. Rissinger was getting up? I did not know anything about it.

Q. Where did you suppose this money was coming from?—A. I did not have an idea, but I supposed it was coming from Mr. Rissinger. Rissinger, to my knowledge, had means.

Q. Did you know that he was organizing a corporation there?—A. I did not.

Q. He never told you about that?—A. I knew later on. I never knew when this first payment was made.

Q. But when you were with Rissinger in Judge Archbald's office you talked about the organization of a local corporation, did you not?—A. No, sir; not when I was there. We talked about the character of the concession and passed on the validity of it. It was an old concession, and this friend of mine had made a lease under that concession, and I questioned whether it was of any value or not.

Q. Did you tell Judge Archbald you questioned whether it was of any value?—A. We discussed it over very freely.

Q. And still you took money for the stock that was being sold?—A. We had a lease from the owners of the concession, and we considered it perfectly good after investigating it.

Q. You and Rissinger explained to the judge that this was a placer gold-mining claim, did you not?—A. Yes, sir.

Q. And you told him and Rissinger told him that they mined gold down there just as they gleaned coal out of the coal dumps in Pennsylvania, did you not?—A. I did not; I did not know anything about it myself.

Q. Did not Mr. Rissinger tell him that they mined that gold down there just as they got the coal out of coal dumps in Pennsylvania?—A. Not in my hearing.

Q. He did not tell you that in your hearing?—A. No.

Mr. Manager STERLING. I believe that is all.

Redirect examination:

Q. (By Mr. SIMPSON.) Mr. Russell, in order to get it clear upon the record, on the check-stub side of your checkbook you put the checks that you have drawn, for what purpose they were drawn, the name of the payee, and the amount?—A. Yes, sir.

Q. On the other side you put in the deposits, the date of the deposit, the person from whom received, and the amount?—A. Yes, sir.

Q. Then, before you turn over to the next page, you add up the checks and deduct them from the amount of money that is supposed to be in the bank?—A. Exactly.

Q. Then you carry over that balance to the next page and repeat that, page after page, throughout the book?—A. Yes, sir; on each page.

Q. That is what that book shows that we have seen here?—A. Yes, sir.

Q. As I understand your statement, you fix the interview that was had with Judge Archbald at a time before the first payment which was made by Mr. Rissinger?—A. Before I received any money.

Mr. Manager STERLING. We object. He proved all of that in the first instance.

Mr. SIMPSON. I am not going to repeat it, but I want to get the thing clear.

Q. (By Mr. SIMPSON.) Mr. STERLING has asked you whether or not the money which was paid was paid for stock. Was there any stock which Mr. Rissinger or his friends were buying from the principal company or was it the concession which they bought?—A. No, sir; it was for a lease of a part of the property which this party who brought it to me owned.

Q. That lease was from whom to whom?—A. From the lessee of the original concessionaire to Mr. Rissinger.

Q. And the moneys which were paid were in payment of that lease?—A. On account of that lease.

Mr. WORTHINGTON. Call Mr. Belin, please.

TESTIMONY OF FRANK L. BELIN.

Frank L. Belin, being duly sworn, was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) Where do you live?—A. Scranton, Pa.

Q. What is your business?—A. I am in the explosives business.

Q. With what corporation or concern?—A. The Du Pont Powder Co. of Pennsylvania.

Q. What is your position with that company, Mr. Belin?—A. Vice president.

Q. Were you connected with that company in 1908?—A. I was.

Q. In the same position?—A. I was the assistant to the president at that time.

Q. Can you give us any information about the attempted or projected purchase by that company of the Katydid culm dump near Moosic, Pa.?—A. Late in the fall of 1908 or early in 1909, I am not sure which, we entered into negotiations with Mr. Robertson for the purchase of thus dump, and it was offered to us for $10,000. We were expecting to build a plant, in fact had started to build a plant, near this dump, and we thought we would build a power plant there and use the culm from the Katydid culm bank for fuel, and we had it examined by experts and they did not think——

Mr. Manager STERLING. We object.

The PRESIDING OFFICER. The witness can state what action he took upon information given.

Mr. WORTHINGTON. He said an examination had been made by an expert, and the expert will be the next witness. We do not ask this witness to tell what the expert did.

The WITNESS. Partly on the recommendations of the expert we declined to purchase this Katydid dump.

Q. (By Mr. WORTHINGTON.) Who was the expert?—A. Mr. Saums, of Wilkes-Barre.

Q. Were you advised at that time that the Hillside Coal & Iron Co. had some interest in this bank?—A. I had a vague idea that they were somewhat interested, but to what extent I did not know.

Q. Did you understand that they were to be compensated?—A. I believe they were to be paid for royalties.

Q. Out of the $10,000?—A. Out of the $10,000.

Q. Why did you not buy?—A. As I say, partly on the recommendation of Mr. Saums.

Q. On what other ground?—A. And partly because we found we could make a better proposition by buying our power from the Scranton Electric Co.

Q. Did you have any dealings direct with the Hillside Coal & Iron Co.?—A. None whatever.

Q. Only through Mr. Robertson?—A. That is all.

Mr. WORTHINGTON. That is all, Mr. President.

Cross-examination:

Q. (By Mr. Manager STERLING.) Your company decided afterwards that you would not buy your own fuel, but you would just buy the power you needed?—A. Yes.

Q. Where was your factory?—A. Near Moosic.

Q. Near this dump?—A. Within about half a mile of it.

Q. So instead of buying the coal that was in this dump you bought your power from some power plant that was at Moosic?—A. No. At Scranton.

Mr. Manager STERLING. That is all.

Redirect examination:

Q. (By Mr. WORTHINGTON.) Was that done after you got the report of your expert?—A. Yes.

The PRESIDING OFFICER. The witness may retire.

TESTIMONY OF HEZEKIAH W. SAUMS.

Hezekiah W. Saums, being duly sworn, was examined and testified as follows:

Q. (By Mr. WORTHINGTON.) What is your full name?—A. Hezekiah W. Saums.

Q. Where do you live?—A. Wilkes-Barre, Pa.

Q. What is your business?—A. Coal business—the coal washery business.

Q. Do you mean by that that you operate washeries, or what?—A. Superintendent of coal washeries; yes.

Q. How long have you been engaged in the coal-washery business?—A. Between 11 and 12 years.

Q. That involves washing coal dumps, I suppose?—A. Yes, sir.

Q. Did you at any time make an examination of what we call here the Katydid culm dump near Moosic, Pa.?—A. Yes, I did; about four years ago.

Q. At whose instance?—A. For Mr. Belin, for F. L. Belin, of Scranton.

Q. Did you make a written report?—A. I did.

Q. Have you that report or a copy of it with you?—A. I have one. I have the estimate of the tonnage; but my letter to him, the last letter I wrote to him, I did not find.

Q. Have you a copy of it?—A. No. I have not a copy of the letter.

Q. Did you make more than one report?—A. Yes, sir; I did.

Q. Why were there two?—A. He first called me up by telephone and asked me to look over the Katydid culm dump and give an approximate idea as to the value of the coal there. I reported. Later on he called me up again and asked me if I would not have a survey made of it and test the bank out and report more accurately, which I did.

Q. How far apart were the two investigations you made?—A. It was some time in February when I made the first examination, and the second was made on the 1st of March, 1909.

Q. They were both in 1909, were they?—A. Yes, sir.

Q. Tell us what conclusion you reached from your first visit.—A. Why, I——

Mr. Manager STERLING. Mr. President, I think we should have here the copy of the report which he submitted to these people.

Mr. WORTHINGTON. If you have anything in the way of reports, I want it.

The WITNESS. Yes, sir; I have a copy of my first report.

Mr. Manager STERLING. We are entitled to see it.

Q. (By Mr. WORTHINGTON.) Is the paper you are holding your final or second report, or a copy of it?—A. It is my first report.

Q. This is your first report?—A. Yes, sir [witness producing paper].

Mr. WORTHINGTON. The paper is dated February 12, 1909. I would like to have that read in evidence, gentlemen.

Mr. Manager STERLING. Let us see the other report now.

Mr. WORTHINGTON. I offer this first and ask to have it read.

Mr. Manager STERLING. We object.

The PRESIDING OFFICER. What is the objection?

Mr. Manager STERLING. My objection is this: In the first place, the witness has not qualified. He has not said that he is a mining engineer. In the second place, he makes that estimate not from any test, but simply from looking over the dump; and he says that he has a report which he made on a thorough examination, which I think we are entitled to see before any of this is admitted in evidence.

Mr. WORTHINGTON. It does not appear, Mr. President, that Judge Archbald ever had a measurement of this dump made and a calculation of the number of tons of the different kinds of coal and what they were worth. The managers went into this line of testimony, giving the opinion of persons who had examined that dump for the purpose of giving evidence in this case. So far as the objection of this witness not being qualified is concerned, I will examine him further as to that. I expect the second report to follow and to put them both in evidence.

Mr. Manager STERLING. If you expect to do that, why should not we see it and let them all go in together?

Mr. WORTHINGTON. The only objection I have to that is that I do not like the manager to instruct me about the manner in which I shall produce my evidence.

Mr. Manager STERLING. The managers will have to insist on trying the case according to the rules of evidence.

The PRESIDING OFFICER. If the witness is properly qualified as an expert, he can certainly give his testimony as to the value of this bank; but the Chair does not understand that that necessarily admits as documentary evidence a paper which he wrote on the subject. The witness can use that to refresh his memory, and the counsel can cross-examine him as to each item on it.

Mr. WORTHINGTON. I was proceeding in exactly that way. I asked him if he had examined the bank and made a report, and he said he had. I then asked him to state what he found on examining that bank. Then the manager objected and called for the report, and now, when it is produced and I ask to have it read in evidence, they object. Now, I must go back to where I was when the objection was made. I would like very much to please them, but they will have to be a little more consistent before I can do it.

Mr. Manager STERLING. Let us see who is consistent. We offered the written report made by Mr. Rittenhouse; counsel for the respondent objected, and the Chair sustained the objection.

Mr. WORTHINGTON. I have a vague recollection that the report of Mr. Rittenhouse is in the record.

Mr. Manager STERLING. No. It was offered——

Mr. WORTHINGTON. Very well. Then I will go back where I was when the objection was made.

Q. (By Mr. WORTHINGTON.) I will ask you to state when you examined that bank in the first instance, what you found there, and what information you acquired as to the quantities of the different kinds of coal there and the value?—A. My first examination, which was purely estimated?

Q. Yes. I want that first, and then I will follow it up with the second. I understand that you may look at your reports or any memoranda you made at the time, for the purpose of refreshing your memory.—A. I can not remember the exact figures. I want to say, sir, that I accepted the figures as given to me by Mr. Robertson's representative—I do not recall his name—as to the tonnage, which I placed at that time at 85,000 tons.

Q. That was on the first visit?—A. That was on the first visit; yes.

Q. Do you mean 85,000 gross tons, or coal?—A. Eighty-five thousand gross tons.

Q. That many tons of culm?—A. Made up of 13,850 tons of slate; 20,740 tons of dirt; 1,338 tons of nut coal; 1,825 tons of pea; 6,825 tons of buck; 17,000 tons of rice; and 23,353 tons of barley, making a total—dropping several fractions—of 85,000 tons.

Q. Did you figure what that was worth?—A. I figured that at that time that the total value of the coal would be $32,299.99 on the ground.

Q. Go on and tell about your second investigation. What was the difference between the manner in which you made your examination the second time and the way you made it the first time?—A. My first examination was purely guesswork. I looked the bank over and examined the culm and made this estimate which I have just read. On the second estimate, I was directed by Mr. Belin to have a survey made, and I employed Mr. Smith, of the firm of Smith & Wells, of Wilkes-Barre, to make the survey. I used his figures for the tonnage. I made the test, however, myself. In my second test, which I think is fairly accurate, I subdivided the bank into two parts. I found that one portion of the bank was much richer than the other. Therefore I drew an imaginary line across and called that bank—or rather, we surveyed it, and we called it 15 per cent of the total.

Q. Can you see this map opposite you on the wall, the map of that bank?—A. Yes, sir.

Q. You are looking at the wrong one I think.—A. That is the one I am looking at, over there.

Q. Could you show where that line was drawn?—A. Very close to it; yes.

Q. I wish you would go and do it, then. Take a pencil and draw, in imagination, the line as near as you can.—A. (Witness indicating on map.) There was a channel cut out here, where they had a conveyer line down here. This was partly washed out on both sides, and, as I recall it now, this portion in here [indicating] up to a point, I would say along there somewhere [indicating], was what I called the old bank, and from there on up; this portion over here I call the new bank.

Q. Which do you say was the richer?—A. This was [indicating].

Q. The old bank?—A. The old bank.

Q. That is enough. Now please go back to the witness stand. [The witness did so.]

Q. Do you notice on the map what is called the conical dump? Can you see it from where you are? It is in the southwest corner.—A. Yes, sir.

Q. Do you include that in what you call the richer part?—A. No, sir.

Q. Now go on, please. You say you divided it into two parts and you gave different figures on the two different parts?

The PRESIDING OFFICER. The Chair would inquire whether it is desired to finish the examination of this witness at this sitting? If so, it will be necessary to extend the time.

Mr. WORTHINGTON. No. It will take some little time further to conclude.

Mr. Manager STERLING. I would like to ask counsel if they will not submit those reports to us in the meantime? It will save time to-morrow.

Mr. WORTHINGTON. Certainly.

Mr. Manager STERLING. We will be glad to have them.

Mr. SMOOT. I move that the Senate sitting as a Court of Impeachment do now adjourn.

The PRESIDING OFFICER. It is not necessary to make the motion. The Chair will declare that the hour of 6 o'clock having arrived, the Senate sitting as a Court of Impeachment stands adjourned until 1.30 o'clock to-morrow.

Thereupon the managers on the part of the House, the respondent, and his counsel withdrew.

Mr. CULLOM. I move that the Senate adjourn.

The PRESIDENT pro tempore. The Senator from Illinois moves that the Senate adjourn.

The motion was agreed to, and (at 6 o'clock and 1 minute p. m.) the Senate adjourned until to-morrow, Tuesday, December 17, 1912, at 12 o'clock meridian.

HOUSE OF REPRESENTATIVES.

MONDAY, *December 16, 1912.*

The House met at 12 o'clock noon.

The Chaplain, Rev. Henry N. Couden, D. D., offered the following prayer:

We invoke Thy blessing, Almighty Father, upon the people of our great Nation. Be with all who are in sorrow and distress to comfort them. Let Thy benediction be upon the President and all others in authority and upon this legislative branch of our Government. Let Thy spirit come mightily upon each individual Member, that all may be guided to the highest conceptions of right and duty, that the interests of those whom they represent may be faithfully and efficiently served; in the name and spirit of Jesus Christ our Lord. Amen.

The Journal of the proceedings of Saturday, December 14, 1912, was read and approved.

CALENDAR FOR UNANIMOUS CONSENT.

The SPEAKER. This being the day for the consideration of the Unanimous Consent Calendar, the Clerk will report the first bill on that calendar.

PUBLIC BUILDING AT DENVER, COLO.

The first business on the Calendar for Unanimous Consent was the bill (S. 3974) to increase the limit of cost of the United States public building at Denver, Colo.

The Clerk read the title of the bill.

Mr. ASHBROOK. Mr. Speaker, the gentleman from Alabama [Mr. BURNETT] who reported this bill is not in the Chamber at this moment, although he will be here soon. I therefore yield to the gentleman from Colorado [Mr. RUCKER].

Mr. MANN. Nobody has the floor yet.

The SPEAKER. That is absolutely correct.

Mr. ASHBROOK. I ask unanimous consent that this bill be temporarily passed without prejudice.

The SPEAKER. The gentleman asks unanimous consent to pass the bill temporarily without prejudice. Is there objection?

Mr. RUCKER of Colorado. I should like to know what is meant by the parliamentary phrase "passed without prejudice."

The SPEAKER. It means that as soon as anybody wants to call it up after the gentleman from Alabama [Mr. BURNETT] comes in the matter will be taken up. Is there objection to passing the bill without prejudice?

Mr. MANN. I think we had better dispose of it.

The SPEAKER. The gentleman objects to passing it without prejudice. Is there objection to the present consideration of this bill?

There was no objection.

The SPEAKER. This bill is on the Union Calendar.

Mr. RUCKER of Colorado. I ask unanimous consent to consider this bill in the House as in Committee of the Whole.

Mr. MANN. Mr. Speaker, I object to that.

The SPEAKER. The gentleman from Illinois objects.

Mr. RUCKER of Colorado. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the state of the Union for the consideration of this bill.

The motion was agreed to.

Accordingly the House resolved itself into the Committee of the Whole House on the state of the Union for the consideration of the bill (S. 3974) to increase the limit of cost of the United States public building at Denver, Colo., with Mr. CLARK of Florida in the chair.

The bill was read as follows:

Be it enacted, etc., That the limit of cost fixed by the act of Congress approved May 30, 1908 (35 Stat., 545), for the new public building at Denver, Colo., for the accommodation of the post office, United States courts, and other governmental offices, be, and the same is hereby, increased $400,000.

Mr. BURNETT. Mr. Chairman, I yield to the gentleman from Colorado [Mr. RUCKER], who will explain the propositions involved in this bill.